DOCUMENT RESUME

ED 393 712 SO 025 129

TITLE	Law Day Stories: An Anthology of Stories about Lawyers, Lawmakers, and the Law.
INSTITUTION	American Bar Association, Chicago, Ill. Special Committee on Youth Education for Citizenship.
REPORT NO	ISBN-1-57073-132-2
PUB DATE	95
NOTE	97p.
AVAILABLE FROM	American Bar Association, Special Committee Youth Education for Citizenship, 541 North Fairbanks Court, Chicago, IL 60611-3314 ($10).
PUB TYPE	Guides - Classroom Use - Instructional Materials (For Learner) (051) -- Guides - Non-Classroom Use (055)
EDRS PRICE	MF01/PC04 Plus Postage.
DESCRIPTORS	Citizen Participation; *Citizen Role; Citizenship Education; Civics; Civil Law; Civil Liberties; Civil Rights; *Constitutional History; Constitutional Law; *Court Role; Courts; Criminal Law; Due Process; Elementary Secondary Education; Equal Education; Equal Protection; Ethnic Discrimination; *Justice; *Law Related Education; *Lawyers; Legislators; Racial Discrimination; Racial Segregation; Religious Discrimination; Search and Seizure; Sex Discrimination; Social Studies; United States History
IDENTIFIERS	American Bar Association; Bill of Rights; *Law Day; Supreme Court; United States Constitution

ABSTRACT

Dedicated to celebrating the importance of law in U.S. life, the 19 stories collected in this volume are about legislators who enact the law, judges who interpret it, and lawyers who practice it. The stories describe the contributions to the United States through the law of distinguished individuals, emphasizing the devotion of many lawyers to public service. The stories also explain landmark court cases that helped build, extend, and solidify the U.S. tradition of legal rights and responsibilities. The stories examine a wide variety of subjects, including: Pauli Murray's efforts to safeguard the civil rights of her fellow African Americans; Clarence Gideon's and Abe Fortas's struggle for the right to a free attorney for poor persons accused of a felony; the delayed acknowledgment of the constitutional rights of interned Japanese-Americans; Thomas Jefferson's brilliance as a young lawyer; the judicial and legislative efforts of Native Americans on behalf of their free exercise of religion; Thurgood Marshall's role the cessation of school segregation in Brown v. Board of Education; the Supreme Court's elaboration of the "exclusionary rule" as a measure to safeguard to Fourth Amendment's protection of citizens from unreasonable searches and seizures; and Ruth Bader Ginsburg's fight against sexual discrimination and her elevation to the Supreme Court. (LH)

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An anthology of stories about lawyers, lawmakers, and the law

ABA Special Committee on Youth Education for Citizenship

SO 025 129

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An anthology of stories
about lawyers, lawmakers,
and the law

Special Committee on
Youth Education for Citizenship

Funding for this issue has been provided by the American Bar Association Fund for Justice and Education; we are grateful for its support.

Law Day Stories is presented by the American Bar Association Special Committee on Youth Education for Citizenship. *Chair:* Al Ellis; *Director, Youth Education Programs:* Christine Watkins; *Editorial Director, Youth Education Publications:* Seva Johnson

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ISBN 1-57073-132-2 PC #497-0074

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Printed in the United States of America

Printed on recycled paper Produced by Creative Services Associates, Inc.

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Someone once said that the most important contribution the United States has made to human progress has not been its technological invention, its business know-how, or even its popular culture. Rather, the greatest gift that the United States has given the rest of the world is its idea of law—specifically, the idea that law can curb power. In most other countries in the past, and in some countries even today, disputes and power struggles have been settled by soldiers. Here in the United States, they are settled by lawyers.

The law of this land was first laid down in its Constitution, written by representatives from the original thirteen colonies in 1787. This landmark document establishes the form of the national government and the separation of powers among the three branches of that government. Its first ten amendments, the Bill of Rights, define the rights and freedoms of all U.S. citizens. From the authority created by this national blueprint and by individual state constitutions have come both the freedoms and responsibilities that govern our lives—from the First Amendment guarantee of free speech to the local ordinance requiring bicycle registration.

To emphasize the importance of law in American life, we celebrate Law Day every May 1. And one excellent—and enjoyable—way to celebrate the law is to read stories about legislators who enact the law, those judges who interpret it, and lawyers who practice it.

The Law Day stories included here reflect the themes of justice, personal excellence, and service to others. You'll find the stories of great individuals who contributed to the law and, therefore, to our country. You'll read about landmark court cases that helped build, extend, and solidify our tradition of legal rights and responsibilities. And you'll discover the arena of public service, to which many lawyers devote their careers.

Together, these Law Day stories hint at the sweep, the complexity, and the majesty of the law in the United States. They are just a few of the thousands that could be told.

A Commitment to Justice

7

by Mary Welek Atwell

Pauli Murray was a poet, lawyer, civil rights activist, feminist, teacher, and priest. Her life was colored by a passionate commitment to justice based on the common humanity of all people. Murray was conscious of the obstacles she faced as a black woman, determined to overcome those obstacles herself, and committed to removing them for others.

Born in Baltimore in 1910, the girl with the nickname Pauli would not know her parents for long. She lost her mother when she was only four, and her father suffered from illnesses until he died in a state mental hospital in 1923. Pauli was then sent to live in North Carolina with her grandparents and with Pauline Fitzgerald Dame, the aunt who would eventually adopt her. Her relatives conveyed to Pauli a sense of family and racial pride, which she would one day describe in her book, *Proud Shoes: The Story of an American Family.* From her grandfather, who had gone south to teach freed slaves after the Civil War, and from her Aunt Pauline, who was also a school teacher, Pauli also developed a love of learning.

Pauli Murray was an excellent student and an independent personality. Although she graduated from high school at the top of her class, she discovered that she did not meet the admissions standards for Hunter College, where she hoped to enroll. From this personal experience, Murray realized that the segregated education then available to black students in the South was far from equal. Determined to attend Hunter, Murray went to live with relatives in New York City, took additional high school courses, and was admitted to Hunter in 1928. Trying to pay for college during the Great Depression, Murray worked at a number of the limited and poorly paying jobs available to black woman at the time.

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After graduation, Murray went to work for the Workers' Defense League (WDL). She traveled to raise funds for the legal defense of Odell Waller, a black sharecropper from Virginia. Waller was accused of murdering the landlord who had cheated and threatened him. The constitutional issue of the case involved a challenge to the poll tax. Waller had been convicted by an all-white jury whose names had been drawn from the Virginia voting list of those who had paid poll taxes. Yet that list excluded blacks and other poor people. The WDL argued that Waller had been deprived of his constitutional right to trial by an impartial jury.

Although the effort to free Waller failed, it may have helped Murray decide to apply to Howard University Law School in 1941. She came to see the knowledge and practice of law as a means of dismantling the structures of segregation and injustice in this country.

At Howard, the small number of students shared a deep commitment to ending racial discrimination. But this historically black institution was set in the segregated capital city, Washington, D.C. For Murray, these were years of intense personal involvement in the struggle for civil rights. She learned to discipline her intelligence, to control her emotions, and to adopt for herself the motto "Don't get mad; get smart."

Murray's opposition to discrimination took the form of written words, direct actions, and legal arguments. She published a piece entitled "Negro Youth's Dilemma" in which she challenged racial bigotry in the U.S. military. She also wrote poetry and articles, and began a correspondence with First Lady Eleanor Roosevelt.

In 1943 and 1944, Murray and her Howard colleagues moved on two fronts to challenge discrimination in public accommodations in Washington, D.C. Murray had studied the philosophy of nonviolent direct action. She believed that, combined with "American showmanship," it could achieve results. With other Howard students, Murray organized sit-ins at several restaurants that discriminated against African Americans. This tactic would be used again, successfully, several decades later in the 1960s. Murray also uncovered an 1872 District of

Columbia civil rights law that had never been repealed. She argued that the law that granted access to public accommodations was still in effect. Although the process took ten years, in 1953 the Supreme Court ruled as Murray had argued in the case *District of Columbia v. John R. Thompson Company.*

Perhaps Murray's most significant contribution to dismantling segregation laws was to the arguments in the historic 1954 Supreme Court decision, *Brown v. Board of Education of Topeka.* In 1896, the Supreme Court had ruled that the practice of "separate but equal" schools and other facilities was not unconstitutional. Through much of the twentieth century, the National Association for the Advancement of Colored People (NAACP) had chipped away at that decision by bringing a series of cases that challenged the equality of the separate facilities. In her senior thesis, Murray argued that this approach should be abandoned in favor of a direct attack on the constitutionality of segregation itself. She argued that setting apart one group of people from another hurt the separated group by marking them with a badge of inferiority. She remembered her own experience in segregated schools, where children felt the pain of rejection because of their color.

In her legal argument, Murray relied on sociology and psychology, just as Thurgood Marshall would when, as the NAACP attorney, he argued the *Brown* case before the Supreme Court. But when Murray raised these points in 1944, her professors rejected her approach as "too visionary." Years later, members of the NAACP legal team recalled using Murray's thesis in their preparation for *Brown.* Likewise, Marshall regarded Murray's 1959 book, *States' Laws on Race and Color,* as the NAACP "Bible."

Graduated at the top of her class at Howard, Murray applied to Harvard Law School for graduate study. Whereas in 1938 the University of North Carolina had rejected her application because "members of your race are not admitted to the University," Harvard rejected her because of her sex. Murray enrolled instead at the Boalt Hall of Law at the University of California at Berkeley. There she received her master's degree (LLM) in 1945, passed the California bar exam, and became a

deputy attorney general of the state. She was the first African American to hold that office.

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Murray returned to the East to be closer to her aging aunts and moved with them to New York City. There she practiced law, first in her own office, and later with the distinguished firm Paul, Weiss, Rifkind, Wharton and Garrison. She published *Proud Shoes,* her family memoir, in 1956. Partly out of curiosity about her African heritage, Murray accepted a teaching position at the Ghana School of Law from 1960 to 1961. When she returned to the United States, she enrolled for graduate study at Yale Law School, where she received the degree of Doctor of Judicial Science in 1965.

Also upon her return to this country in 1961, Murray was appointed to President John F. Kennedy's Commission on the Status of Women. Here she developed the legal argument that the Fourteenth Amendment, which prohibited racial discrimination and guaranteed "equal protection of the laws," could also be used to prohibit sex discrimination. She even developed legal arguments for including the prohibition against discrimination based on sex in the landmark Civil Rights Act of 1964.

Murray saw women's rights and African Americans' civil rights as inseparable parts of the fundamental principle of human rights. She was a founding member of the National Organization for Women (NOW), seeing NOW as comparable to the NAACP.

At the age of sixty, Murray was not yet through serving those who needed her. She became convinced that she had a calling to become an Episcopal priest. Again Murray returned to school and studied for another three years. After her ordination, she devoted the next seven years to parish work and ministering to the sick. Murray retired in 1984 and died of cancer the following year. Her autobiography, *Song in a Weary Throat: An American Pilgrimage,* was published after her death.

Mary Welek Atwell is an Associate Professor of Criminal Justice at Radford University in Virginia.

The Right to Counsel

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The Sixth Amendment to the Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." But this is only a guarantee of the right to a lawyer in a federal court; the amendment does not say that courts must provide a person with a lawyer. And it does not even guarantee the right to a lawyer in a state court. Even so, in the middle part of this century many states had begun to provide lawyers in various criminal cases. In 1962, however, Florida was not one of them. A man named Clarence Earl Gideon—with his attorney, Abe Fortas—helped change that.

In April 1962, Clarence Earl Gideon sat in a Florida state prison and wrote a letter to the U.S. Supreme Court. Gideon was an uneducated and poor man, but his letter carried a strong message:

> *It makes no difference how old I am or what color I am or what church I belong to if any. The question is I did not get a fair trial. The question is very simple. I requested the court to appoint me [an] attorney and the court refused.*

How did Clarence Gideon come to be in prison? And what happened to his letter to the Court?

Gideon's story begins in 1910, the year he was born in Hannibal, Missouri. Unlike the happy-go-lucky childhood of Tom Sawyer, Mark Twain's character who also grew up in Hannibal, Clarence Gideon's childhood was far from happy. His father died when he was just three years old, and he did not get along well with his strict mother and her second husband. At fourteen, Gideon dropped out of school and ran away from home.

About a year later, Gideon was arrested for stealing clothes from a store. Upon learning of his arrest, his mother requested for him to be sent to a reform school. He was released a year later, but this was only the beginning of a long string of arrests and jail sentences. From the time he was eighteen until he was forty-two, Clarence Gideon would be arrested and convicted of burglary four times and spend a total of seventeen years in prison.

Then in 1952, Gideon's life appeared to change. He married for a third time, and for the next nine years, he stayed out of trouble with the law. Gideon and his wife had two boys of their own, as well as custody of her three children from a previous marriage.

But in 1961, Gideon was arrested once again. In Bay Harbor, just outside Panama City, Florida, he was charged with breaking and entering a pool hall with the intent of stealing. He claimed he was innocent and pleaded not guilty in court.

Gideon's trial was before Judge Robert L. McCrary and a jury of six people. When asked by the judge if he was ready to go to trial, Gideon answered, "I am not ready, your honor."

When asked why not, Gideon replied that he had no counsel and that he wanted the court to appoint a lawyer to defend him.

Judge McCrary responded: "Mr. Gideon, I am sorry, but I cannot appoint counsel to represent you in this case. Under the laws of the state of Florida, the only time the court can appoint counsel to represent a defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request."

A capital offense is a crime that may be punished by death. Because the crime Gideon was charged with was not a capital one, he was left to defend himself against the prosecuting attorney and his key witness, Henry Cook. Cook testified that he saw Gideon come out of the pool hall on the day it was broken into. Gideon cross-examined Cook, called eight witnesses of his own to the stand, and made a strong plea to the jury of his innocence. But in the end, he could not persuade the

jurors. They found him guilty, and Judge McCrary sentenced Gideon to five years in the state penitentiary.

Gideon may have been unschooled, but he was not unintelligent. And because he had been arrested and tried so many times, Gideon was educated somewhat in the ways of the law. He had acquired a basic understanding of the rights of the accused and of court procedures. He therefore set about working to secure his freedom on the basis that his rights had been denied. Specifically, Gideon claimed that he had a constitutional right to a defense counsel, and that right had been denied.

Gideon's first step was to file a writ of habeas corpus with the supreme court of Florida. Habeas corpus is a claim that someone is being jailed illegally. The Florida state supreme court rejected that claim.

Gideon's next step was to write to the Supreme Court of the United States. Using the meager number of law books in the prison library, he was able to file a "petition for certiorari"—his request that the Court hear his case. In June 1962, the Supreme Court announced that it would do just that.

Because Gideon was poor, he again requested an attorney to present his case. The Justices of the Supreme Court agreed and named Abe Fortas to be Gideon's attorney. Fortas was a highly respected lawyer who one day would himself be appointed a Supreme Court Justice.

Fortas's job in presenting Gideon's case was made especially difficult because the Justices of the high court had in fact already ruled on a similar case twenty years earlier. In *Betts v. Brady,* the Supreme Court—which was then composed of a partially different group of Justices—had refused to overturn a lower court's decision not to appoint a lawyer for a Maryland farmer named Smith Betts, who was too poor to hire his own. Fortas, therefore, not only had to argue that state courts should be required to provide a lawyer in any case where the defendant could not afford one, but he also had to convince the Supreme Court that it should overturn an earlier Court's decision. In other words, he was asking the Court to admit that the earlier decision was a mistake.

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Fortas based his argument on the Fourteenth, not the Sixth, Amendment to the Constitution. According to the Fourteenth Amendment, no state may "deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." Fortas argued that it was impossible for a defendant to get a fair trial without an attorney. Yet the "due process of law" guaranteed by the Fourteenth Amendment required that a person must be given a fair trial. He also maintained that the equal protection clause was violated when only those who could afford lawyers could have one.

The Supreme Court found this constitutional argument convincing. Overturning the earlier *Betts* and the Florida decisions, it ruled that Clarence Earl Gideon had indeed been denied his right to a fair trial when he had been denied a court-appointed lawyer.

Back in Florida, Gideon was awarded a new trial. With the aid of an attorney, he was acquitted of the breaking and entering charge. And he and Abe Fortas had helped guarantee that in the future, no criminal defendant who faced serving time in prison would be without a lawyer simply because he or she was too poor to hire one.

War, Race, and the Constitution

15

by John E. Finn

Some would call the Supreme Court's decision in the 1944 case Korematsu v. United States *one of the darker moments in the history of U.S. law. Yet, through the work of congressional lawmakers almost forty years later, the legal concepts of constitutional rights, equal protection under law, and due process would eventually win out.*

On Saturday, May 30, 1942, a young man was walking down a street with his girlfriend in San Leandro, California. The local police picked him up for questioning. The man insisted his name was "Clyde Sarah" and produced a battered draft registration card to prove it. Suspicious, the police escorted "Clyde" down to the station, where he eventually admitted the truth: His real name Fred Toyosaburo Korematsu, and he was the son of Japanese immigrants who, until recently, had lived in Oakland.

Actually, Fred later admitted that he had done far more to conceal his identity than simply forge the draft registration card. A month or two earlier, Fred had sought out a plastic surgeon of dubious reputation to alter his eyes and nose. The doctor wanted $300, but Fred could afford only $100. The surgeon agreed to do some of the work, but he warned Fred that "he could not make [him] look like an American."

Why did the police arrest Fred? And why had Fred attempted to alter his appearance? The answers to these questions tell us something about the inevitable tension between the uplifting ideals of the Constitution and the terrible reality of war.

Indeed, Fred's troubles really began on December 7, 1941, when Japanese forces attacked Pearl Harbor, a U.S. naval base in Hawaii. Many people feared an invasion of the main-

land would soon follow, and panic gripped the West Coast. Some military leaders and politicians, including General John L. DeWitt, urged President Roosevelt to remove the Japanese Americans living in the West. Removal and placement in camps was necessary, they claimed, because the loyalty of Japanese Americans was in doubt, and the risk of spying and sabotage was great. .

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Under DeWitt, the army even prepared a report that claimed acts of sabotage were numerous. This was a charge that DeWitt knew was untrue and that the Office of Naval Intelligence and the FBI both dismissed as unfounded. When asked why we should intern the Japanese but not Italians or Germans (we were at war with both Germany and Italy, as well as Japan), DeWitt responded that World War II was "a war of the white race against the yellow race" and "a Jap is a Jap." DeWitt also complained loudly about the number of "colored" troops under his command. DeWitt was not alone in his bigotry. For decades there had been racial hostility toward all Asians on the West Coast, and especially in California.

Just seventy-four days after Pearl Harbor, on February 19, 1942, this fear of Japanese Americans was given the force of law. On that day, President Franklin Roosevelt signed an exclusion order that led eventually to the evacuation of more than 110,000 Japanese—adults and children, citizens and noncitizens. They were interned in "Relocation Centers" in California, Washington, Arkansas, Utah, and Idaho. Surrounded by harsh spotlights, armed guards, and barbed wire, these centers were broken-down and smelly horse stables furnished with steel cots and spider webs. Two years later, Supreme Court Justice Hugo Black would refuse to call them concentration camps "with all the ugly connotations that term applies," but no other name does justice.

The San Leandro police arrested Fred because he was Japanese and because he had refused to report to the military authorities. Fred knew they would ship him off to one of the camps, just as they had done to his family two months earlier. For reasons of his own—reasons of the heart—Fred wanted to avoid the camps. He wanted to be with his fiancée. He hoped

that with luck—and plastic surgery—he could avoid the authorities long enough to save enough money for him and his fiancée to move to Arizona.

Instead, Fred found himself in jail. He was convicted of violating the military order and sentenced to the camps. It did not matter that Fred had earlier volunteered for the Coast Guard and the Navy; Fred's racial background was more important than his patriotism.

A lawyer from the American Civil Liberties Union (ACLU) agreed to appeal Fred's case to the higher courts. The lawyer warned Fred of the difficulties, both legal and personal, that would be involved in challenging the constitutionality of the exclusion order. Fred was convinced that the policy was morally wrong and illegal, however, and he agreed to let the ACLU use his case, along with a few others, to test the law.

The Supreme Court agreed to hear the case of *Korematsu v. United States* in 1944. Fred's lawyers argued that the exclusion order violated Fred's constitutional rights to due process and equal protection under law. They also argued that there was no reasonable basis for the military's fears of invasion or sabotage by Japanese Americans on the West Coast.

On December 18, one week before Christmas, the Court ruled 6–3 in favor of the government. Justice Hugo Black wrote the majority opinion for the Court. He acknowledged that the internment policy was a hardship. "But hardships are part of war, and war is an aggregation of hardships." Justice Black continued. "Pressing public necessity may sometimes justify the existence of [racial] restrictions," he wrote, but "racial antagonism never can." Relying upon information provided by the government's lawyers, the Court concluded that there was evidence of sabotage and that the risk to the West Coast was real. Hence, Justice Black continued, "Korematsu was not excluded ... because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire [and] because the properly constituted military authorities feared an invasion of our West Coast."

Three justices—Roberts, Murphy, and Jackson— dissented. Speaking bluntly, Justice Frank Murphy argued that the exclu-

sion order "goes over `the very brink of constitutional power' and falls into the ugly abyss of racism." Unlike the majority, Murphy was reluctant to accept the army's judgment of danger. He observed that the order was based "mainly upon questionable racial and sociological grounds not ordinarily within the realm of expert military judgment." Instead, "The main reasons ... appear ... to be largely an accumulation of much of the misinformation, half-truths and insinuations that for years have been directed against Japanese Americans by people with racial and economic prejudices—the same people who have been among the foremost advocates of the evacuation.... I dissent, therefore, from this legalization of racism."

Fred Korematsu thus lost his case. Although some Japanese were released from the camps even before the Court decided *Korematsu,* the last to go—young children and the elderly—did not leave until 1946. Like Fred, they were the real people that endured what the Court casually referred to as the hardships of war.

Could *Korematsu* happen again? Justice Jackson feared so. He complained in his dissent that the Supreme Court's majority opinion had supported "a principle of racial discrimination.... The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need." Almost thirty years later, Justice Black said he would still decide the case the same way. His friend, Justice William Douglas, concluded that the case "probably would have been decided the same way by any Court that I have sat on in the twenty-three years [I've been a Justice]."

The story of *Korematsu v. United States* does not end there, however. In 1983, a United States District Court vacated (that is, set aside any record of) Fred's conviction. To achieve this, Korematsu's lawyers used an extremely rare legal procedure called a petition for "coram nobis." This petition is available only when there has been a "fundamental error" or "manifest injustice." Such a situation occurs when a prosecutor has deliberately misstated facts or failed to present a court with all the facts. Korematsu's attorneys argued that new evidence showed there had been a deliberate effort by the government to sup-

press, distort, and falsify the evidence submitted to the Supreme Court. This in turn showed that there had been a "manifest injustice" done in Fred's case. Addressing the district court, Fred argued that "as long as my record stands in federal court, any American citizen can be held in prison or concentration camps without a trial or a hearing."

District Court Judge Marilyn Hall Patel ruled in favor of Korematsu. By doing so, she became the first judge ever to vacate a conviction after it had been upheld on final appeal by the Supreme Court. Judge Patel described the government's response to Fred's arguments as practically "a confession of error," and she concluded that there was "substantial support in the record that the government deliberately omitted relevant information and provided misleading information" to the Supreme Court. Almost forty years after the government imprisoned Fred and thousands of others because of their race, a federal court finally concluded that Fred hadn't done anything wrong.

In 1980, Congress created a Commission on Wartime Relocation and Internment of Civilians to review the internment order and to recommend appropriate action. The commission held hearings from July to December of 1981, often receiving tearful testimony from former inmates in the camps. They told stories of sorrow, anger, and shame. In its unanimous report to Congress, the commission concluded that internment was largely the result of "race prejudice, war hysteria and a failure of political leadership" that resulted in "a grave injustice." The commission recommended that Congress repay the 60,000 or so survivors of the camps $20,000 each. Congress passed legislation to pay the survivors in 1988. President Ronald Reagan signed the bill into law the same year.

John E. Finn is an Associate Professor of Government at Wesleyan University, where he teaches courses on constitutional law and civil liberties. He received his J.D. from Georgetown and his Ph.D. from Princeton. Finn's publications include Constitutions in Crisis: Political Violence and the Rule of Law *(New York: Oxford University Press, 1991).*

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The Self-Evident Lawyer

by Jerome J. Shestack

He has been called statesman, philosopher, writer, inventor, musician, naturalist, geographer, scholar, aristocrat, thinker, dreamer, doer. Thomas Jefferson was all of these. And more.

Once, when John F. Kennedy was entertaining an assembly of Nobel laureates at a White House dinner, he called them the most extraordinary collection of talent and knowledge ever gathered together there—"with the possible exception of when Thomas Jefferson dined alone."

Surprisingly, descriptions of Jefferson seldom refer to him as a lawyer. Yet, Jefferson's self-written epitaph gives his own selection of achievements he wished to be remembered for. One is as author of the Declaration of Independence; the second, as author of the Statute of Virginia for Establishing Religious Freedom.

Both are legal documents that show the stamp of a legal mind and perhaps the most well-suited legal pen of any age. Indeed, throughout Jefferson's public career, the mind and art of the lawyer are evident time after time.

To be sure, his legal career covered only five years as a law student and seven years in law practice. But, in the balance of Jefferson's extraordinary public career, these dozen years were immensely fruitful. And they provide remarkable clues to the wondrous accomplishments that were to follow.

No one in his time, and perhaps since, prepared harder for the practice of law than Thomas Jefferson. At 17, after schoolboy training in Latin and the classics, Jefferson entered the College of William and Mary in Williamsburg, Va. There he had the good fortune to come under the wing of three influen-

tial men: William Small, a mathematician and an enlightened philosopher; Francis Fauquier, the governor of the colony; and George Wythe, the premier lawyer of his day.

The four dined together often, and their conversation was witty, deep and eclectic, covering the world of politics, philosophy, architecture, classics, poetry, science and art. That a teenager would be part of their circle was a tribute to the unusual intelligence and charm Jefferson must have displayed even as a youth.

By the end of his second year, Jefferson had completed college, and at the age of 19 he was ready to start his legal studies.

Jefferson was blessed that the man for whom he was a legal apprentice was Wythe, who went on to be a signer of the Declaration of Independence, a member of Congress, a renowned professor of law and chancellor of Virginia. Then, Wythe was only 35 but already one of the most respected lawyers and humanists in Virginia.

Jefferson's apprenticeship with Wythe lasted five years. By steeping himself in philosophy and humanism, he shaped his views and prepared for his extraordinary role in molding American democracy. As Professor Fawn Brodie put it, Jefferson's five years of study were "not so much an apprenticeship for law as the apprenticeship for greatness."

In October 1766, Jefferson was admitted to the bar of the General Court of the Virginia colony—the civil, criminal and appellate jurisdiction. Its active bar consisted of less than a dozen leading lawyers; Jefferson at age 23 was the youngest.

Lawyers in Jefferson's day were trial lawyers. A handful practiced in the General Court, the others in lower county courts. Jefferson bypassed the lower courts and, on Wythe's motion, was admitted at the outset to the General Court.

During 1767, his first year of practice, Jefferson handled 68 matters, good for a beginning lawyer. His cases dealt with land disputes, debts, the recovery of slaves, slander, assault and battery. He rendered opinions, for which he generally charged twenty shillings; he drew some deeds and advised about wills; and he instituted suits in....

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Most of Jefferson's matters concerned land—in particular, "caveats" and "petitions" involving disputes over land patents and lapsed lands.

However, in his brief years of practice, Jefferson did undertake a number of cases that provided a high profile, not always to his advantage.

One, in 1770, involved the representation of Samuel Howell. Howell's grandmother was a mulatto slave and was bound by the law to serve until age 31. While in servitude she had a daughter who gave birth to Howell. The daughter was sold into slavery, and the new owner claimed Samuel Howell's service until he was 31. Howell sued for his freedom, and Jefferson represented him without fee. Jefferson argued that no law extended the servitude to the grandson.

The fascinating part of Jefferson's plea was his argument on slavery and natural rights. He argued that "under the law of nature, all men are free" and "everyone comes into the world with a right to his own person." Therefore, holding the mother in servitude violated the law of nature. How then could a law violating the law of nature extend to her children and grandchildren?

Jefferson's argument was given short shrift. The court decided against him without even hearing from his opponent, Wythe. It is striking that the concept "all men are born free," reworded in the Declaration of Independence, was first spoken by Jefferson in defense of a slave.

Jefferson was lenient, perhaps even lax, as a financial manager. He did not charge for cases taken over from Wythe, in which Wythe had been paid, and did not charge general retainers. He often did not charge friends and relatives. He took cases free for persons who claimed they were wrongfully held in slavery, and also for persons who were poor.

Jefferson's own fee books show that his net receipts were only about 1,200 pounds for his seven years of practice. Without revenue from his farming, he could not have lived on his meager income from the law.

How good a lawyer was Jefferson? Very good, if we consider his early admittance to the select, prestigious General

Court. Exceptionally good if we consider that George Wythe, Patrick Henry and other prominent lawyers and leaders of the colony chose him to represent them. Extremely good, if we look at the depth of learning revealed in his writings and the few reports we have of his arguments.

But by the spring of 1774, Jefferson, Patrick Henry, Richard Henry Lee and others were fueling the engine of revolution. In Virginia, the revolutionaries met to choose delegates for the First Continental Congress. Jefferson, at age 31, was chosen, although sickness was to prevent him from attending.

In the summer of 1774, while still in practice, Jefferson took five weeks to draw up a Summary View of the Rights of British Americans, which reached the radical conclusion that Americans possessed the natural right to govern themselves. The summary's 23 pages displayed not only awesome learning and eloquence, but also fervor, indignation and prophetic quality. Published as a pamphlet, it had an explosive effect throughout the colonies. Indeed, Jefferson's summary became the basis of the Declaration of Independence.

In August 1774, Jefferson cosigned his legal practice to his cousin, Edmund Randolph, turning over 253 cases. Jefferson himself wrote that he gave up his practice because apprehension over the forthcoming revolution caused the closing of the courts. However, another factor was that politics made an increasing demand on his time.

There is no doubt that at the time Jefferson gave up the law he was already eminent in his profession and highly respected by peers and clients for his knowledge, resourcefulness, brilliant writing and skill at pleading cases. Had he stayed in practice, he very likely would have become one of the new nation's premier lawyers and a renowned jurist. But this was not to be.

A little less than two years after he left practice, Jefferson was to sit in a rooming house at Seventh and Market Streets in Philadelphia and pen the Declaration of Independence.

In his public career, Thomas Jefferson enriched his country with wisdom, humanity; grace and the spirit of democracy. And in all of his works, he drew greatly from the depths of the law

and his training in his profession. True, he was a practicing lawyer for only a short time. But he never abandoned the law. Rather, he brought the law to the cause of American democracy.

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A Hero of Indigent Defense

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The first female lawyer in California, Clara Shortridge Foltz was also the first to propose that the state should provide and pay for a public defender in all criminal cases. In fact, she is credited with creating the public defender model. In this endeavor and in others, Foltz fought for the rights of the poor, or indigent, as well as for the rights of women.

Clara Shortridge Foltz was the only daughter of five children of an Indiana family. She was born to Elias and Talitha Shortridge on July 16, 1849. Her father was not only a pharmacist and minister but a practicing lawyer as well.

About 1858, the Shortridge family moved to Mount Pleasant, Iowa, where Clara, as a young teen, excelled as a student in Howe's Female Seminary. This schooling would be her only formal education. On December 30, 1864, at the age of fifteen, Clara Shortridge eloped with Jerome Richard Foltz.

By 1872, Foltz and her husband had moved, first to Portland, Oregon, and then to San Jose, California. Foltz was now becoming active in the woman suffrage movement, occasionally lecturing on women's right to vote. The death of her husband in 1877 left her in debt with five children to support.

With the help of her parents, who had also moved out west in the early 1870s, Foltz began to study law. At the time, however, women were not allowed to practice law in the state of California. Seeking to change this discriminatory practice, Foltz wrote an amendment to the state statute that deleted its "white male" limitation and helped lobby her Woman Lawyers Bill through the state legislature. Despite heavy opposition, the new law was enacted on April 1, 1878. On September 5 of that same year, Foltz was admitted to practice law in the Twentieth District Court in San Jose.

Later that year, Foltz—along with a second woman, Laura de Force Gordon—tried to attend classes at Hastings College of Law. Foltz described her classroom experience thus:

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> The first day I had a bad cold and was forced to cough. To my astonishment every young man in the class was seized with a violent fit of coughing. . . . If I turned over a leaf in my notebook every student in the class did likewise. If I moved my chair—hitch went every chair in the room. I don't know whatever became of the members of that class. They must have been an inferior lot, for certain it is, I have never seen nor heard tell of one of them from that day to this.

Two days later, the board of the college met to officially deny the women admission to the school because they were female. Both Foltz and Gordon sued. Foltz's suit became a test case, and the two women, acting as their own counsel, carried the case through the Fourth District Court to the California Supreme Court. Their legal arguments succeeded. But by the time Foltz won the right to be admitted to the law school, her law practice was already too busy to allow her time to attend.

Foltz's legal career was a long and successful one. She originally specialized in probate (will) and divorce cases, but her law office soon drew "the poor and sick and despairing." She became an especially good criminal trial lawyer. And as her legal reputation grew, corporate clients began to turn to her.

For most of twenty-five years, Foltz practiced in San Francisco. For a short time, she moved to San Diego, where she founded and edited the *San Diego Bee*, a daily newspaper. There was also a brief time spent in New York City, where she opened a law office after being admitted to the New York state bar in 1896. In 1906, Foltz moved to Los Angeles. There she would practice law the rest of her life.

Yet Foltz's interest and devotion lay not only in the practice of law but also in the administration of justice. She became one of the leaders of the movement to establish public defenders—those lawyers paid by the government to defend accused persons who cannot afford to pay for defense counsel themselves. She advocated this idea in an 1893 address before the

Congress of Jurisprudence and Law Reform held during the Chicago World's Fair. She also drafted a model bill that would authorize the creation and appointment of public defenders. This statute, which came to be called the Foltz Defender Bill, was introduced in thirty-three state legislatures. It became the law in Foltz's home state, California, in 1921.

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Foltz's sense of justice extended beyond the courtroom and the needs of the accused to the prison and the needs of the convicted. She worked for the appointment of a jail matron in San Francisco, the separation of juvenile offenders from adult prisoners, and the parole system.

Once Foltz was asked her opinion of the practice of law. She called it "hard, unpoetic, relentless." But she practiced law for most of her adult life. And in 1991, 57 years after her death, Clara Shortridge Foltz was awarded a law degree from Hastings, the college that had once refused to admit her.

Freedom of Religion on Chimney Rock

28

by Ellen Alderman and Caroline Kennedy

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." These words—called the establishment clause—begin the First Amendment of the Bill of Rights of the Constitution. They define our freedom of religion. As the case Lyng v. Northwest Indian Cemetery Protective Association *shows, both Congress and the courts supply avenues to follow when people are pursuing what they believe to be the exercise of that freedom.*

When the dogwood tree blossomed twice and a whale swam into the mouth of the Klamath River, the Yurok medicine man knew it was time for the tribe to perform the White Deer Skin Dance. He knew that these natural signs were messengers sent by the Great Spirit to tell the people things were out of balance in the world. The White Deer Skin Dance and Jump Dance are part of the World Renewal Ceremonies of the Yurok, Karok, Tolowa, and Hoopa Indian tribes of northern California. The World Renewal Ceremonies are performed to protect the earth from catastrophe and humanity from disease and to bring the physical and spiritual world back in balance. Preparations for the ceremonies begin far up in the mountains, in the wilderness known to Indians as the sacred "high country."...

In recent years, there has been a quiet resurgence of traditional Indian religion in the high country. Young Indians who left to find jobs on the "other side of the mountain" are returning to their ancestral grounds. Lawrence "Tiger" O'Rourke, a thirty-two-year-old member of the Yurok tribe, worked for

eight years around the state as a building contractor before returning to raise fish in the traditional Indian way....

There are about five thousand others who, like Tiger, are happy to live in isolation from the "white man's world"; indeed the spiritual life of the high country depends on it. But when the U.S. Forest Service announced plans to build a logging road through the heart of the high country, many of the Yurok tribe decided they could not remain quiet any longer.

They went to court, claiming that the logging road would violate their First Amendment right to freely exercise their religion. They said it was like building a "highway through the Vatican." What the Indians wanted the courts to understand was that the salmon-filled creeks, singing pines, and mountain trails of the high country were their Vatican....

Known in Indian language as *wagay,* which translates roughly as "way out there," the high country is a remote area five to seven thousand feet up in northern California's Siskiyou Mountains, about twenty-five miles east of the Pacific Ocean and thirty miles south of the Oregon border. Today, it is part of Six Rivers National Forest.

The most sacred area of the high country is known as Medicine Mountain, a ridge dominated by the peaks of Doctor Rock, Peak 8, and Chimney Rock. Chimney Rock, a majestic outcropping of pinkish basalt, rises sixty-seven hundred feet above sea level. From its summit, views of receding blue waves of mountain ridges fade into the horizon in all directions. On a clear day, the shimmer of the Pacific Ocean gleams at the end of the winding silver ribbon of the Smith River below.

Once the medicine man reaches Chimney Rock he uses Rhythm Sticks to enter a trancelike state in which he will communicate with the Spirit World. He may remain on the rock all night, or for a number of days and nights, until he receives a sign from the Creator that the ceremonies may begin.

Indian doctors, primarily women, also use the high country for training and to gather medicinal herbs....

Although only a few medicine men and Indian doctors actively use the sacred sites of the high country, the spiritual well-being of the entire tribe depends on the ancient rituals.

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Despite more than half a century during which government removed Indians from their villages and prohibited them from speaking their own language or practicing their own religion, a few elderly Indians never gave up the old ways. Some young Indians, like Tiger, are returning to their homeland. And others, like Walter "Black Snake" Lara, are trying to balance the old world with the new.

Black Snake works felling trees. He says it is an honorable job in many parts of the lush California forests, but not in the high country. Of the sacred grounds he says, "The Creator fixed it that way for us. We're responsible for it."...

Actually, the Forest Service started constructing a logging road through the Six Rivers National Forest in the 1930s. It began at either end, in the lumber-mill towns of Gasquet to the north and Orleans to the south, thus becoming known as the G-O Road. Under the Forest Service's management plan, once the road was completed, the towns would be connected and timber could be hauled to mills at either end of the forest.

By the 1970s, the two segments of the seventy-five-mile road dead-ended in the forest. Black pavement simply gave way to gravel and dirt, and then the side of a mountain. The final six-mile section needed to complete the road was known as the Chimney Rock section of the G-O Road.

The Indians feared that if the road was built it would destroy the sanctity of the high country forever....

An influx of tree fellers, logging trucks, tourists, and campers would also destroy the ability to make medicine in the high country. The consequences were grave; if the medicine man could not bring back the power for the World Renewal Ceremonies, the people's religious existence would be threatened. And because the land itself is considered sacred by the Indians, they could not move their "church" to another location. "People don't understand about our place," Black Snake says, "because they can build a church of worship wherever they want."

The Indians filed a lawsuit in federal district court in San Francisco: *Northwest Indian Cemetery Protective Association v. Peterson.* (R. Max Peterson was named as defendant in his capac-

ity as chief of the U.S. Forest Service.) They claimed that construction of the G-O Road would destroy the solitude, privacy, and undisturbed natural setting necessary to Indian religious practices, thereby violating their First Amendment right to freely exercise their religion....

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In 1983, the federal district court for the Northern District of California held that completion of the G-O Road would violate the Northwest Indians' right to freely exercise their religion. The court concluded that the G-O Road would unconstitutionally burden their exercise of sincerely held religious beliefs, and the government's interest in building the road was not compelling enough to override the Indians' interest. Therefore, the court enjoined, or blocked, the Forest Service from completing the road. When the decision was announced, the group of fifty to a hundred Indians who had traveled south to attend the trial were convinced that their medicine had been successful.

The government appealed the decision to the Ninth Circuit Court of Appeals. While the case was pending, Congress passed the California Wilderness Act, which designated much of the sacred high country as wilderness area. Thus all commercial activity, including mining or timber harvesting, was forever banned. But as part of a compromise worked out to secure passage of the act, Congress exempted a twelve-hundred-foot-wide corridor from the wilderness, just enough to complete the G-O Road. So although the surrounding area could not be destroyed, the road could still be built. That decision was left to the Forest Service. The medicine was still working, however; in July 1986, the Ninth Circuit affirmed the district court's decision and barred completion of the road.

The government then appealed the case to the U.S. Supreme Court. It filed a "petition for certiorari," a request that the Court hear the case. The Supreme Court receives thousands of these "cert" petitions each year, but accepts only about 150 for argument and decision.... *Northwest Indian Cemetery Protective Association* was one of the 150 cases accepted.

The Indians based their Supreme Court arguments on their victories in the lower courts and on a landmark 1972 Supreme Court case, *Wisconsin v. Yoder.* In *Yoder,* three Amish parents

claimed that sending their children to public high school, as required by law, violated their right to free exercise of religion. They explained that the Old Order Amish religion was devoted to a simple life in harmony with nature and the soil, untainted by influence from the contemporary world.... The Amish said that forcing their children out of the Amish community into a world undeniably at odds with their fundamental beliefs threatened their eternal salvation. Therefore, they claimed, state compulsory education laws violated their right to freely exercise their freedom of religion. The Supreme Court agreed.

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If the Supreme Court could find that freedom of religion outweighed the state's interest in compulsory education, the Indians believed that the Constitution would make room for them too.... The Indians argued that, like the Amish, they wanted only to be left alone to worship, as they had for thousands of years.

But the Forest Service argued that the Indians were seeking something fundamentally different from what the Amish had won. Whereas the exemption from a government program in *Yoder* affected only the Amish, and "interfere[d] with no rights or interests of others," the Indians were trying to stop the government from managing its own resources. From the government's point of view, if the courts allowed these Indians to block the G-O Road, it would open the door for other religious groups to interfere with government action on government lands everywhere. (It did not matter to the government that the Indians considered the high country to be *their* land.)...

The singing pines, soaring eagles, and endless mountain vistas of northern California are about as far from the white marble Supreme Court on Capitol Hill as it is possible to get in the United States. Yet like thousands of Americans before them, a small group of Indians came in November 1987 to watch their case argued before the highest court in the land. Though the Indians had never put much faith in any branch of the government, they had come to believe that if the justices could see the case through "brown eyes," they would finally make room in the Bill of Rights for the "first Americans."

Some did not realize that by the time a case reaches the Supreme Court, it no longer involves only those individuals whose

struggle initiated it, but has enduring repercussions throughout the country.... When the Supreme Court decides a case based on the Bill of Rights, it enunciates principles that become the Supreme Law of the Land, and are used by lower courts across the United States to guide their decisions.

The Indians lost by one vote. "The Constitution simply does not provide a principle that could justify upholding [the Indians'] legal claims," Justice Sandra Day O'Connor wrote for the majority. "However much we wish that it were otherwise, government simply could not operate if it were required to satisfy every citizen's religious needs and desires."

The Court accepted that the G-O Road could have "devastating effects on traditional Indian practices." Nonetheless, it held that the G-O Road case differed from *Yoder* because here, the government was not *coercing* the Indians to act contrary to their religious beliefs....

The Indians are challenging the Forest Service on environmental grounds and attempting to get Congress to add the G-O Road corridor to the existing, protected wilderness area.

Like many Americans, Tiger and Black Snake say they never thought much about the Constitution until it touched their lives directly. Among the tribes of northern California, defeat fired a new fight for their way of life, spurred intertribal outreach and educational efforts, and brought a new awareness of the legal system. "We *have* to understand the Constitution now," says Tiger O'Rourke. "We still need our line of warriors, but now they've got to be legal warriors. That's the war now, and it's the only way we're going to survive."

This story is reprinted with permission from the book In Our Defense: The Bill of Rights in Action *(William Morrow, New York, 1991) by Ellen Alderman and Caroline Kennedy. Both are attorneys living in New York City.*

The story was written several years ago. Since then, Congress has passed the legislation the Indians sought. A law has added the G-O Road corridor to the Siskiyou Wilderness, ensuring that the road through the high country will not be completed.

Cracking the High Court

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by Richard L. Nygaard

It's February 1865, and counselor John S. Rock makes history as the first African American to practice before the U.S. Supreme Court.

The Supreme Court opinion, concerning a slave, Dred Scott, was dressed in all the elegance typical of a formal court ruling. It declared, however, that black persons did not deserve the respect of whites. In rejecting the freedom sought by one man, the highest court in the land had sanctioned the continued oppression of an entire race.

That was 1857, four years before the Civil War began.

It is now 1865, only a few months before that bloody war is to end. It is, more precisely, early February. (Reliable historical sources report that date variously as Feb. 1, 2 and 5.) A 39-year-old black man is standing in the same court that only several years earlier had issued the *Dred Scott* decision. The man is taking an oath to uphold the U.S. Constitution. He is a lawyer being admitted to practice before the U.S. Supreme Court—the first African-American so honored.

Dramatizing the moment, a reporter for *The New York Tribune* wrote that the man, John S. Rock, "stood, in the monarchical power of recognized American Manhood and American Citizenship, within the bar of the court which had [just seven years earlier] solemnly pronounced that black men had no rights which white men were bound to respect; stood there a recognized member of it, professionally the brother of the distinguished counselors on its long rolls, in rights their equal, in the standing which rank gives their peer. By Jupiter, the sight was grand."

The height to which Rock ascended that day was in part testament to the wrenching changes brought about by the war. He took the oath two years after President Lincoln's Emancipation Proclamation, only two days after Congress had passed the 13th Amendment abolishing slavery, and at the conclusion of a nation-splitting, four-year war that had largely been waged over the morality of one race's domination of another.

But at the moment, it was at least equally testament to the man himself, a man who had in a short time already been addressed as "teacher," "dentist," "doctor," and, most recently, as "attorney." His had been a soaring career launched from a base of intense study, brilliance and hard work.

John S. Rock was born of free parents in Salem, N.J., on Oct. 13, 1825. He was a studious child and spent much of his childhood reading. His parents encouraged him. Although they were of modest means themselves, they provided financial support for his formal education.

By 1844 he had completed sufficient education to become a teacher, starting in a one-room school in Salem, N.J. His work was impressive, and the praise he received from veteran teachers caught the attention of two local doctors, who in 1848 let him use their books and libraries so he could study dentistry. Each day, Rock taught school for six hours, tutored private students for two hours and studied dentistry for eight hours. He was a man with a burning desire to excel and an insatiable desire to learn.

Rock wanted to go to medical school but found that racial barriers prevented African-Americans from attending any medical schools in the United States. He did, however, master the dental profession as an understudy of a Dr. Harbert, and in January of 1850 moved to Philadelphia to open a dental office. His mastery of dentistry won him a silver medal for his work in 1851 for a set of dentures he made.

A year later in Philadelphia, Rock began attending lectures at the American Medical College. It was a time when many doctors and academicians alike still defended the theory of polygenesis, which held that blacks were a distinct species;

when slavery was still defended in the South and the North; and when blacks needing treatment were systematically refused admission to hospitals. Overcoming these adversities, Rock became one of the first blacks to receive a medical degree from a regular medical school. A teacher, physician and dentist, he was now just 27 years old and already one of the best educated persons of his time.

In 1855 Rock became a delegate to the Colored National Convention in Philadelphia. That same year he sponsored a dinner honoring William Neil Cooper, a black abolitionist who six years earlier had started the litigation integrating the public schools of Boston....

Following this exposure, Rock became an even more outspoken abolitionist. He was an engaging and fiery public speaker in great demand throughout the Northeast. He was soon devoting all his time and effort to speeches for the abolitionist cause. He spoke with great pride about the beauty and accomplishments of his race. But more, his speeches were a call to action.

Teacher, dentist, doctor and renowned orator, Rock was still not satisfied. At each step he found his progress frustrated by laws. In 1860 he heeded his own advice to follow speech with action: He gave up his dental and medical practices and began to study law in Boston.

In law he also distinguished himself among blacks and whites alike. On Sept. 14, 1861, T. K. Lathrop, a white lawyer, sponsored Rock before the Superior Court of Massachusetts in Boston. Rock was examined and passed with ease, and was admitted the same day to practice in all the courts of Massachusetts. A short time later he became a justice of the peace and opened his office in Boston.

Lawyer Rock intensified his efforts for racial equality. In speeches, he demanded the same "equal opportunities and equal rights . . . our brave men are fighting for." And what he called for in speeches he demanded in action. He successfully lobbied Congress to get equal pay for black troops. He encouraged blacks to elevate themselves through hard work, contend-

ing, "Whenever the colored man is elevated, it will be by his own exertions."

In 1864, Rock wrote to Sen. Charles Sumner of Massachusetts to help him become admitted to the U.S. Supreme Court bar. Rock was told that nothing could be done so long as Roger B. Taney, who wrote the *Dred Scott* decision, was still chief justice. "I suppose," wrote Rock to a friend, "the old man lives on out of spite." When Taney died, Lincoln replaced him with Salmon P. Chase, an abolitionist.

In early February 1865, Rock was ushered into the courtroom of the Supreme Court and took the oath that all lawyers before and since have taken to become admitted to that court:

> I do solemnly swear that as an attorney and as a counselor of the court I will conduct myself uprightly and according to the law, and that I will support the Constitution of the United States.

Looking ahead, Sumner observed that the admission of a black to practice before the Supreme Court would make it harder to maintain any color barriers anywhere, and that streetcars would be open to blacks.

John S. Rock, D.D.S., M.D., Esq., died on Dec. 3, 1866, just months before Congress passed the Civil Rights Act of 1867, the first law to embody the rights for which he had so long struggled. A Freemason, he was buried with full Masonic honors.

History remembers John S. Rock as a scholar, doctor, lawyer and dentist. The legal profession remembers him as the first African-American lawyer to win the right to practice before the U.S. Supreme Court.

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A Texas Woman Who Fought for Women

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by Charles C. Howard

Sarah T. Hughes was a pioneer for women in the legal profession. She was a lawyer, a politician, and a judge when women were generally barred from those jobs. And she used her profession to further the cause of women everywhere.

Today, many women are lawyers and judges, but that was hardly the case fifty or even twenty-five years ago. The first women lawyers actually had to prove that women could be as good as men at practicing the law. Sarah Hughes was one of the first women to do just that.

Sarah Hughes was born about 100 years ago, on August 2, 1896, in Baltimore, Maryland. As a young woman, she at first wanted to be a teacher—a profession many young women entered at that time, at least until they married. Hughes attended Goucher College and taught school for a short time in North Carolina, but soon realized she didn't really enjoy teaching. She then decided to become a lawyer. At that time, there were almost no women lawyers in the country. Women just didn't do that sort of thing.

Hughes went to Washington, D.C., where she was accepted into the George Washington University School of Law. She took classes at night and worked during the day as a police officer to pay her way through school. While in school, she met her future husband, George E. Hughes, who was also a law student. They married on March 13, 1922.

George Hughes was from Texas, and after their graduation, the couple decided to move to Dallas and begin their lives together. There George went to work for the Veterans

Administration, and Sarah began to practice law. Or at least, she tried. Unfortunately, no law firm in Dallas was willing to hire a woman. They all believed that women were not smart enough or were too emotional to be good lawyers. Only after a long time of trying and many personal visits was she allowed to be an assistant in a law firm. She also taught law classes at a small school in Dallas.

Hughes saw many examples of discrimination against women during her early years in Dallas. Married women were not allowed to be teachers in the Dallas public schools. Women could not serve on juries, and married women had trouble entering into contracts. To right some of these wrongs, Hughes began her career in government.

In 1930, Hughes ran for the Texas state legislature. Women had been allowed to vote only since 1920, and only a few had ever been elected to office. Campaigning tirelessly, Hughes visited businesses, homes, and public events. She won her first election that year and became the fourth women in history to win a seat in the Texas House of Representatives.

From 1931 to 1935, Sarah Hughes worked as a lawmaker. She tried to change the law to allow women to serve on juries and to allow married women to sell property. In 1934, she was elected "Most Valuable Member of the House" by her fellow representatives.

In 1935, Texas Governor James Allred appointed Hughes the first female district court judge in Texas history. One state senator said she should be home washing dishes. Hughes replied that the senator would not have been elected "if his charming wife had been home washing dishes instead of campaigning for him."

Sarah Hughes never lost interest in politics, and in 1946 she entered a race for the U.S. House of Representatives, but lost. She spoke out many times on the need to stop discrimination against women. She even believed that women should be drafted into the military. President Harry Truman offered to appoint her to the Federal Trade Commission in 1950, but she declined. In 1958, she was defeated in another political race, this time for the Texas Supreme Court.

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In 1952, Hughes was named president of the National Federation of Business and Professional Women's Clubs. That same year at the National Democratic Convention, her name was placed in nomination for vice-president of the United States. She quickly withdrew, however.

Then in 1962, Sarah Hughes was appointed by President John F. Kennedy to be federal judge in the U.S. District Court in Dallas. The Senate confirmed her on March 18 of that year. As a Texas district judge, Hughes had handled only cases and lawsuits involving Texas law. Now, as a federal judge, she would preside over cases involving all federal laws, including the U.S. Constitution. She was the second woman in the country's history to be named a federal judge.

On November 22, 1963, Hughes's career was again touched by President Kennedy. On that day, of course, he was visiting Dallas, Texas. In fact, Hughes had heard him give a speech in the morning. Later that day, as the president and his wife were riding in an open convertible, an assassin shot and killed him.

When Hughes heard the terrible news, she went home. There she was notified that Vice-President Lyndon B. Johnson, an old friend, wanted her for a special responsibility. Before Johnson could become president, a federal judge had to administer the oath of office to him. Traditionally, a Justice of the Supreme Court would do this, but now there was no time. Johnson wanted Sarah Hughes to perform the duty. She went to the airport and boarded the plane with him. As they flew back to Washington, Hughes administered the oath that made Lyndon Johnson president.

Hughes was as popular a federal judge as she was a state judge. In 1964 the Federal Bar Association named her the year's "Outstanding Jurist." She was noted for her common sense, but she could also be impatient, once telling a lawyer, "Some lawyers like to talk just to hear themselves talk. Now let's move along."

Judge Hughes handled many cases in her years on the federal bench. The most controversial was in 1970, the case known as *Roe v. Wade*. *Roe* challenged a Texas law that out-

lawed all abortions. Sitting with two other federal judges, Sarah Hughes heard arguments from two women lawyers that the law should be declared unconstitutional because it invaded the privacy of women. On June 17, 1970, Judge Hughes's written opinion came down declaring the Texas law unconstitutional. Almost three years later, the U.S. Supreme Court would uphold this decision in one of the most important and controversial cases in U.S. legal history.

Sarah Hughes resigned from the federal bench on August 1, 1975, at age 79. She suffered from poor health in her later years and died on April 24, 1985.

Yet Sarah Hughes remains an important figure both for women and for lawyers. She believed in using the law to help right the many wrongs she had encountered in her life. By the time of her death, there were numerous women lawyers and judges, including one on the U.S. Supreme Court. Sarah Hughes helped lead the way for all the women in our legal system today.

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Shedding Light on America's First Woman Lawyer

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by Sandra Goldsmith

Being the first to accomplish a goal is both noteworthy and difficult. That is especially true when unjust barriers are set in your way. The story of Myra Bradwell is the story of how one nineteenth-century woman helped break down those barriers, both for herself and for all the women lawyers who were to follow.

Imagine spending years studying law, passing your state's bar exam with flying colors—and then being informed by court officials that you were being denied the right to practice because of your sex or race or religion.

That crushing blow was delivered to Myra Bradwell, a 19th-century Chicago resident who, because she was a woman, was prohibited from practicing her chosen profession, twice by the Illinois Supreme Court and then by the U.S. Supreme Court.

But rather than sending Bradwell scurrying back to her kitchen and to her family—as some of the presiding judges in her case undoubtedly hoped—these obstacles to practicing law propelled her into a quarter-century career as publisher and editor-in-chief of the *Chicago Legal News*, for two decades the most widely circulated legal publication in the country. The newspaper also became her vehicle for promoting a social agenda that expanded the rights of women and prompted reforms in the legal profession.

Bradwell sought to become a lawyer for what would now be considered a very tame and nonrevolutionary reason: she wanted to help her husband, James Bradwell, who needed her assistance in his busy practice. She had begun to study law

with him after they married in 1852, when he was a law student himself. Much of her motivation stemmed from her belief that "married people should share the same toil and the same interests and be separated in no way."

She took the Illinois bar exam in 1869, the year after she began the *Chicago Legal News*. She was not the first woman to pass a state bar exam, but Arabella Mansfield, who passed the Iowa exam six weeks before Bradwell passed the Illinois exam, returned immediately to teaching English after being admitted to practice law and had no further professional involvement with the law. One biographer of Bradwell considers Myra the first woman to have any impact on the law in the United States.

In fact, the denial of her right to practice as an attorney may have been responsible for the influence she eventually wielded at the helm of the *Chicago Legal News*. Her inability to work in her husband's practice gave her the time and perhaps the increased motivation to funnel her talents into legal journalism. Once her right to practice was denied, she focused on the newspaper. By 1872, when the Illinois legislature passed a law that made it possible for women to practice any profession—a law Bradwell drafted and lobbied through the state legislature—she was a successful and influential legal journalist. "She was so immersed in the newspaper that she didn't want to bother [seeking admission to the bar] at that point," Friedman speculates. "Perhaps she felt she could have more impact through the newspaper than through practicing."

The *Chicago Legal News* initially set out to provide "legal information, general news, the publication of new and important decisions, the other matters useful to the practicing lawyer or man of business." Bradwell quickly arranged for her paper to be the "paper of record" for publication of statutes enacted by the Illinois legislature and, later, for printing judicial decisions by the U.S. Supreme Court and all the lower federal courts in the country, bringing precise information on new laws and court decisions to attorneys months before they had previously been available.

This tactic was a shrewd business approach. It ensured the commercial success of the *Chicago Legal News* and opened the door for Bradwell's use of her publication as a "bully pulpit" for her views.

In the pages of the newspaper and through her own actions, Bradwell championed a wide range of causes. She worked hard to improve the conditions and standards under which the Chicago legal community labored. She urged better legal education, encouraging more thorough preparation for the bar exam; she argued for the establishment of a Chicago bar association and, once it began (although she was never invited to join), pushed it to set fees and police attorneys' abuses. She lobbied against the widespread practice of bribing juries; she supported improved working conditions for judges, including better pay and improved courthouse facilities; and she advocated action against attorneys who were unscrupulous or drank excessively.

But her activities were not limited to the legal community. She was a tireless fighter for the rights of women and the mentally ill. She campaigned to open law school admissions to women and to allow women to practice, taking up the causes of several women who faced obstacles in their efforts to become lawyers. She was instrumental in obtaining the release of Mary Todd Lincoln, widow of the assassinated president, from a mental asylum where she had been unjustly confined by her son. She was involved in efforts to permit women to hold public office, even before they were enfranchised (that is, allowed to vote). And she was active in the suffrage movement, although her contributions were not recorded for history, most likely because of longstanding disagreements with Susan B. Anthony, who as a result left Bradwell out of her accounts of the movement.

Bradwell's life and writings are said to hold many lessons for contemporary readers of both sexes and any profession. Some issues she addressed have modern counterparts: judges' salaries, courtroom conditions, oversight of lawyers' misconduct by professional associations, the right of women to work on equal professional terms with men. And although Bradwell

had shortcomings—she could be insensitive and willingly manipulated situations to achieve her goals—her life shows the value of perseverance, tenacity, and creativity in overcoming obstacles.

"There are ways around societally imposed barriers even by working within the system," says a biographer of the lessons Bradwell's life offers. "You can accomplish goals even though society has sown barriers in your way."

Sandra Goldsmith is a contributing editor of the American Bar Association's Student Lawyer. *This story was adapted from an article that originally appeared in the April 1994 issue of the magazine detailing the life of Myra Bradwell as recounted by Jane M. Friedman's* America's First Woman Lawyer: The Biography of Myra Bradwell *(Prometheus Books, 1993).*

The Woman Who Beat the Klan

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by Jesse Kornbluth

The Ku Klux Klan is a nationwide group of white people who believe that white Christians are superior to blacks and other people of different skin color or religion. Violence and fear have historically been their weapons. This is the story of how one woman, Beulah Mae Donald, turned aside her fear so that the world could know the violence that the Klan did to her son. And it is the story of how a lawyer helped her succeed.

In her dream, there was a steel, gray casket in her living room. Who was the dead man laid out in a gray suit? She couldn't tell. And every time she moved closer to the coffin, someone she didn't know said, "You don't need to see this." But Beulah Mae Donald knew that she did, and so she woke from her dream at two in the morning in Mobile, Ala., on March 21, 1981. The first thing she did, she later said, was to look in the other bedroom, where her youngest child slept. Michael, 19, wasn't there. Though Michael watched television with his cousins in the evening, he had left before midnight.

Mrs. Donald drank two cups of coffee and moved to her couch, where she waited for the new day. At dawn, Michael still wasn't home. To keep busy, she went outside to rake her small yard. As she worked, a woman delivering insurance policies came by. "They found a body," she said, and walked on. Shortly before 7 A.M., Mrs. Donald's phone rang. A woman had found Michael's wallet in a trash bin. Mrs. Donald brightened—Michael was alive, she thought. "No, baby, they had a party here, and they killed your son," the caller reported. "You'd better send somebody over."

A few blocks away, in a racially mixed neighborhood about a mile from the Mobile police station, Michael Donald's

body was still hanging from a tree. Around his neck was a perfectly tied noose with 13 loops. On a front porch across the street, watching police gather evidence, were members of the United Klans of America, once the largest and, according to civil rights lawyers, the most violent of the Ku Klux Klans. Less than two hours after finding Michael Donald's body, Mobile police would interview these Klansmen. Lawmen learned only much later, however, what Bennie Jack Hays, the 64-year-old Titan of the United Klans, was saying as he stood on the porch that morning. "A pretty sight," commented Hays, according to a fellow Klansman. "That's gonna look good on the news. Gonna look good for the Klan."

For Bennie Hays, the 25 policemen gathering around Michael Donald's body represented the happy conclusion to an extremely unhappy development. That week, a jury had been struggling to reach a verdict in the case of a black man accused of murdering a white policeman. The killing had occurred in Birmingham, but the trial had been moved to Mobile. To Hays—the second-highest Klan official in Alabama—and his fellow members of Unit 900 of the United Klans, the presence of blacks on the jury meant that a guilty man would go free. According to Klansmen who attended the unit's weekly meeting, Hays had said that Wednesday, "If a black man can get away with killing a white man, we ought to be able to get away with killing a black man."

On Friday night, after the jurors announced they couldn't reach a verdict, the Klansmen got together in a house Bennie Hays owned on Herndon Avenue. According to later testimony from James (Tiger) Knowles, then 17 years old, Tiger produced a borrowed pistol. Henry Francis Hays, Bennie's 26-year-old son, took out a rope. Then the two got in Henry's car and went hunting for a black man.

Michael Donald was alone, walking home, when Knowles and Hays spotted him. They pulled over, asked him for directions to a night club, then pointed the gun at him and ordered him to get in. They drove to the next county. When they stopped, Michael begged them not to kill him, then tried to escape. Henry Hays and Knowles chased him, caught him, hit

him with a tree limb more than a hundred times, and when he was no longer moving, wrapped the rope around his neck. Henry Hays shoved his boot in Michael's face and pulled on the rope. For good measure, they cut his throat.

Around the time Mrs. Donald was having her prescient nightmare, Henry Hays and Knowles returned to the party at Bennie Hays' house, where they showed off their handiwork, and, looping the rope over a camphor tree, raised Michael's body just high enough so it would swing.

It took two years, two FBI investigations and a skillfully elicited confession to convict Tiger Knowles of violating Michael Donald's civil rights and Henry Hays of murder. Hays, who received the death sentence, is that rarest of southern killers: a white man slated to die for the murder of a black.

At that point, a grieving mother might have been expected to issue a brief statement of gratitude and regret, and then return to her mourning. Beulah Mae Donald would not settle for that. From the moment she insisted on an open casket for her battered son—"so the world could know"—she challenged the silence of the Klan and the recalcitrance of the criminal justice system. Two convictions weren't enough for her. She didn't want revenge. She didn't want money. All she ever wanted, she says, was to prove that "Michael did no wrong."

Mrs. Donald's determination inspired a handful of lawyers and civil rights advocates, black and white. Early in 1984, Morris Dees, cofounder of the Southern Poverty Law Center, suggested that Mrs. Donald file a civil suit against the members of Unit 900 and the United Klans of America. The killers were, he believed, carrying out an organizational policy set by the group's Imperial Wizard, Robert Shelton. If Dees could prove in court that this "theory of agency" applied, Shelton's Klan would be as liable for the murder as a corporation is for the actions its employees take in the service of business.

Mrs. Donald and her attorney, State Senator Michael A. Figures, agreed to participate in the civil suit. In February, 1987, after 18 months of work by Dees and his investigators, the case went to trial. Although Mrs. Donald hadn't attended the 1983 trial, she decided to push herself and go to the civil

trial. "If they could stand to kill Michael," she reasoned, "I can stand to see their faces." But she couldn't look at Tiger Knowles, the first witness, as he gave the jurors an unemotional account of the events leading up to the murder. And she cried silently when Knowles stepped off the witness stand to demonstrate how he helped kill her son.

Mrs. Donald was more composed when former Klansmen testified that they had been directed by Klan leaders to harass, intimidate and kill blacks. She had no difficulty enduring defense witnesses—the six Mobile Klansmen and the lawyer for the United Klans of America cross examined Dees' witnesses, but called none of their own. Just four days after the trial had started, it was time for the closing arguments.

At the lunch break on that day, Tiger Knowles called Morris Dees to his cell. He wanted, he said, to speak in court. "Whatever you do, don't play lawyer," Dees advised him. "Just get up and say what you feel."

When court resumed, the judge nodded to Knowles. "I've got just a few things to say," Knowles began, as he stood in front of the jury box. "I know that people's tried to discredit my testimony . . . I've lost my family. I've got people after me now. Everything I said is true . . . I was acting as a Klansman when I done this. And I hope that people learn from my mistake . . . I do hope you decide a judgment against me and everyone else involved."

Then Knowles turned to Beulah Mae Donald, and, as they locked eyes for the first time, begged for her forgiveness. "I can't bring your son back," he said, sobbing and shaking. "God knows if I could trade places with him, I would. I can't. Whatever it takes—I have nothing. But I will have to do it. And if it takes me the rest of my life to pay it, any comfort it may bring, I will." By this time, jurors were openly weeping. The judge wiped away a tear.

"I do forgive you," Mrs. Donald said. "From the day I found who you all was, I asked God to take care of y'all, and He has."

Four hours later, the jury announced its $7 million award to Mrs. Donald.

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In May, 1987, the Klan turned over to Mrs. Donald the deed to its only significant asset, the national headquarters building in Tuscaloosa which was later sold for $55,000. Mrs. Donald's attorney made a motion to seize the property and garnish wages of individual defendants. And on the strength of the evidence presented at the civil trial, the Mobile district attorney was able to indict Bennie Hays and his son-in-law, Frank Cox, for murder.

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The Great Orator in Fact and Fiction

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This is the day of sound bytes, when politicians look for the shortest, catchiest phrase to get them on the nightly news. The very idea of masterful speechmaking may seem quaint and even lost. But the power of oratory once was used to measure greatness, and perhaps there was no greater orator in the history of this nation's lawmaking chambers than Daniel Webster. Here are two looks—one fact, one fiction—at the little man with the giant voice.

It was a day in January; the year was 1830. Isaac Bassett, at the time a young Senate page, would describe the frenzy in the halls of the Senate years later in his memoirs. It was the day Daniel Webster gave his masterful reply to a speech of Senator Robert Hayne on the western land question:

"As early as 9 o'clock, crowds poured to the Capitol. At 12:00, the Senate chamber, galleries, floor, and lobbies were suffocatingly filled, the very stairways were dark with people." Women spectators vied for the best view as they squeezed their chairs in between the desks on the floor of the old Senate chamber. Each hall and passageway where Webster's voice could be heard was filled. The House stood deserted as its members crowded into the lobby behind the vice president's chair. Representative Dixon Lewis of Alabama, a man "distinguished for his enormous size . . . was seated behind the painted glass frame that separated the lobby from the floor of the chamber, and, unable to see Mr. Webster, he deliberately pulled out his knife and removed the obstructing part of the glass," clearing a space as large as a man's hand.

Bassett related that as Webster began to speak, ". . . although his most zealous opponents appeared to be unconcerned and uninterested at first, one especially . . . trying hard to read his newspaper upside down, . . . it was not long before friend and foe alike were carried away with the power of his elo-

quent oratory. . . . In one corner of the gallery I noted several men wiping the tears from their eyes when Mr. Webster was speaking of his own state: I thought they must be from Massachusetts."

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One can presume that in this debate, as in others, Webster did not stride into the Senate chamber but, as Bassett vividly described his manner, "sauntered in as if personally unnoticed. He was so conscious of his power and had all of his mental resources so well in hand that he never was agitated or embarrassed; his garments in the Senate chamber were unsurpassed. Before delivering a speech, he often appeared absent minded. Rising to his feet he seemed to recover perfect self-possession which was aided by thrusting the right hand within the folds of his vest, while his left hung gracefully by his side. His dark complexion grew warm with inward fire."

According to Bassett, "There was in this nation a more profound respect for Daniel Webster than for any other man . . . As a defender of the Constitution, he was unrivaled."

★ ★ ★ ★ ★ ★ ★

Webster was a successful lawyer as well as orator and lawmaker. In fact, his legal mind and oratorical skills were so well respected that they became the subject of Stephen Vincent Benét's admiring pen in the short story "The Devil and Daniel Webster":

> They said, when he stood up to speak, stars and stripes came right out in the sky, and once he spoke against a river and made it sink into the ground. They said, when he walked into the woods with his fishing rod, Killall, the trout would jump out of the streams right into his pockets, for they knew it was no use putting up a fight against him; and, when he argued a case, he could turn on the harps of the blessed and the shaking of the earth underground. That was the kind of man he was. . . . And the biggest case he argued never got written down in the books, for he argued it against the devil, nip and tuck and no holds barred.

How did Daniel Webster come to argue a case against the devil? In the story, his old neighbor, Jabez Stone, sells his soul to the devil for worldly success. But when the devil comes to claim the

soul several years later, Jabez understandably has second thoughts. So he enlists Webster as his attorney in his "mortgage case." Webster demands a trial for his client, so the devil (called the "stranger," or Mr. Scratch) assembles a jury of condemned souls—traitors and murderers and renegades—and a judge who "presided at certain witch trials once held in Salem":

> Then the trial began, and, as you might expect, it didn't look anyways good for the defense. . . .
>
> Dan'l Webster had faced some hard juries and hanging judges in his time, but this was the hardest he'd ever faced, and he knew it. They sat there with a kind of glitter in their eyes, and the stranger's smooth voice went on and on. Every time he'd raise an objection, it'd be "Objection sustained," but whenever Dan'l objected, it'd be "Objection denied." Well, you wouldn't expect fair play from a fellow like this Mr. Scratch.
>
> It got to Dan'l in the end, and he began to heat, like iron in the forge. When he got up to speak he was going to flay that stranger with every trick known to law, and the judge and jury too. He didn't care if it was contempt of court or what would happen to him for it. He didn't care any more what happened to Jabez Stone. He just got madder and madder, thinking of what he'd say. And yet, curiously enough, the more he thought about it, the less he was able to arrange his speech in his mind.
>
> Till, finally, it was time for him to get up on his feet, and he did so, all ready to bust out with lightnings and denunciations. But before he started he looked over the judge and jury for a moment, such being his custom. And he noticed the glitter in their eyes was twice as strong as before, and they all leaned forward. Like hounds just before they get the fox, they looked, and the blue mist of evil in the room thickened as he watched them. Then he saw what he'd been about to do, and he wiped his forehead, as a man might who's just escaped falling into a pit in the dark.
>
> For it was him they'd come for, not only Jabez Stone. He read it in the glitter of their eyes and in the way the stranger hid his mouth with one hand. And if he fought them with

their own weapons, he'd fall into their power; he knew that, though he couldn't have told you how. It was his own anger and horror that burned in their eyes; and he'd have to wipe that out or the case was lost. He stood there for a moment, his black eyes burning like anthracite. And then he began to speak.

He started off in a low voice, though you could hear every word. They say he could call on the harps of the blessed when he chose. And this was just as simple and easy as a man could talk. But he didn't start out by condemning or reviling. He was talking about the things that make a country a country, and a man a man.

And he began with the simple things that everybody's known and felt—the freshness of a fine morning when you're young, and the taste of food when you're hungry, and the new day that's every day when you're a child. He took them up and he turned them in his hands. They were good things for any man. But without freedom, they sickened. And when he talked of those enslaved, and the sorrows of slavery, his voice got like a big bell. He talked of the early days of America and the men who had made those days. It wasn't a spread-eagle speech, but he made you see it. He admitted all the wrong that had ever been done. But he showed how, out of the wrong and the right, the sufferings and the starvations, something new had come. And everybody had played a part in it, even the traitors.

Then he turned to Jabez Stone and showed him as he was—an ordinary man who'd had hard luck and wanted to change it. And, because he'd wanted to change it, now he was going to be punished for all eternity. And yet there was good in Jabez Stone, and he showed that good. He was hard and mean, in some ways, but he was a man. There was sadness in being a man, but it was a proud thing too. And he showed what the pride of it was till you couldn't help feeling it. Yes, even in hell, if a man was a man, you'd know it. And he wasn't pleading for any one person any more, though his voice rang like an organ. He was telling the story and the failures and the endless journey of mankind. They

got tricked and trapped and bamboozled, but it was a great journey. And no demon that was ever foaled could know the inwardness of it—it took a man to do that.

The fire began to die on the hearth and the wind before morning to blow. The light was getting gray in the room when Dan'l Webster finished. And his words came back at the end to New Hampshire ground, and the one spot of land that each man loves and clings to. He painted a picture of that, and to each one of that jury he spoke of things long forgotten. For his voice could search the heart, and that was his gift and his strength. And to one, his voice was like the forest and its secrecy, and to another like the sea and the storms of the sea; and one heard the cry of his lost nation in it, and another saw a little harmless scene he hadn't remembered for years. But each saw something. And when Dan'l Webster finished he didn't know whether or not he'd saved Jabez Stone. But he knew he'd done a miracle. For the glitter was gone from the eyes of judge and jury, and, for the moment, they were men again, and knew they were men.

"The defense rests," said Dan'l Webster, and stood there like a mountain. His ears were still ringing with his speech, and he didn't hear anything else till he heard Judge Hathorne say, "The jury will retire to consider its verdict."

[Juror] Walter Butler rose in his place and his face had a dark, gay pride on it.

"The jury has considered its verdict," he said, and looked the stranger full in the eye. "We find for the defendant, Jabez Stone."

With that, the smile left the stranger's face, but Walter Butler did not flinch.

"Perhaps 'tis not strictly in accordance with the evidence," he said, "but even the damned may salute the eloquence of Mr. Webster."

The excerpts of Isaac Bassett's memoirs and the description of Daniel Webster speaking on the Senate floor were taken from the Congressional Record *as entered by Senator Robert Byrd of West Virginia, September 11, 1987. Excerpts from "The Devil and Daniel Webster" were taken from* Selected Works of Stephen Vincent Benét, Volume Two: Prose *(Farrar & Rinehart, New York, 1942).*

Devoted to Serving the Poor

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by Monica Whitaker and Mary Feely

Pro bono. "For the good." When lawyers do work pro bono, they do it without pay for the public good. They do it because they are committed to justice. Here are the stories of just five of the thousands of lawyers who do pro bono work and other public service work, and the people they have helped.

Luis Galvan

Luis Galvan is the supervisor of the Federal Defender Program in Chicago.

Distraught after an argument with his wife, the Chicago man phoned a bank. He said he had a bomb and was going to rob the bank.

When he arrived at the bank, Federal Bureau of Investigation agents were waiting. He gave himself up and was arrested.

"He wasn't going to rob the bank," explains his public defender, Luis Galvan. "He wanted to get arrested because his wife had thrown him out and he had nowhere else to go."

Because of those circumstances, the man received a shorter sentence than usual for bank robbery. And he entered a drug detoxification program while in prison.

That man is just one of many who have been helped by Luis Galvan, an attorney with the Federal Defender Program. Born in Mexico and raised on the Southeast Side of Chicago in a steel-mill district that is largely Hispanic, Galvan didn't have to go far to find people in need of legal assistance.

"The biggest thrill you have in this job is to be able to have an impact on someone's life," says Galvan.

Galvan's ties to his community and "concern about the rights of people in a legal setting" spurred him to complete a law degree at DePaul University. After graduation from the university's law school, he began work with the Defender Program and a free legal clinic that operates in a local church one evening a week.

As a federal defender, Galvan represents his clients through every stage of the legal process. He will represent a client at initial hearings, through a trial, and in appeals—all the way to the U.S. Supreme Court if need be.

On a typical day, he spends the morning and part of the afternoon in court. He visits clients in jail and usually has time in the afternoon to write legal motions. Overcoming client's problems becomes a personal challenge, he says. Many bring disappointments, but the few bright spots seem to make it all worthwhile.

"About 40 percent of this job is social work," Galvan says. "We have to get people into alcohol and drug programs and develop sentencing alternatives."

Because the workload is reasonable and because he may spend years representing a client, Galvan often develops a close rapport with clients and their families.

"We try to address the social ills that caused our clients to come through the federal justice system. By and large, we can do a good job for the people who are willing to accept our advice and get the counseling and other services they need.

"We have a lot of failures, but we also have a lot of success stories. It's great to have people call you years later and tell you how well they're doing."

And what about the distraught and unsuccessful bank robber?

"He keeps in contact," says Galvan. "He's working, he's overcome his drug habit, and he's doing real well."

Doug Robinson

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Douglas G. Robinson is a partner at Skadden, Arps, Slate, Meagher, & Flom in Washington, D.C. He received a 1994 ABA Pro Bono Publico Award for his work.

It was a grisly tale for the headlines.

An elderly couple found bound and hacked to death with a machete in what apparently began as a burglary.

Police fingered 29-year-old Frederico Macias, a poor member of an ethnic minority. He was tried, convicted of murder, and sentenced to die.

"A lot of people have the knee-jerk reaction that the people on death row are guilty and deserve what they got," says Doug Robinson, who took on Macias's case as a volunteer in 1988. He and his law firm colleagues spent five years and thousands of hours researching the case.

On the basis if what they learned, the Washington lawyer persuaded the federal courts to reverse the conviction by proving that Macias's original trial lawyer was ineffective.

The original lawyer had overlooked an alibi witness who could vouch for Macias's whereabouts at the time of the murder, and witnesses who could refute the testimony of a 9-year-old girl who said she saw the defendant with blood on his shirt and hands on the day of the crime.

Macias's constitutional right to a fair trial had been violated because of the lawyer's ineffectiveness.

Doug Robinson, who began the case as a volunteer with the American Bar Association's (ABA's) death penalty project, says his experience deepened his resolve against capital punishment.

"This is an issue that defines who we are as a civilization," he says. "I'm convinced that the death penalty goes disproportionately to minorities and people of little means. The more I've been into it, the more I've seen that the system of justice is just not precise.

"There's too much opportunity for error, and with the death penalty, it's an error that can't be corrected."

Tina Shanahan

Tina Shanahan is enrolled in the Clinical Law Program at the University of Maryland School of Law in Baltimore.

The woman sunken against the sheets of her hospital bed is troubled and dying. AIDS has ravaged her body. Her four children, each fathered by a different man, have nowhere to go. The eldest has run away from home.

"It's sad to see her in the last stages of the disease," says law student Tina Shanahan, an intern at the clinical law office handling the woman's case and the custody of her children. "It's pretty challenging going to the hospital and not being able to tell if she's coherent enough to sign documents."

Shanahan, who is working toward a joint law degree and masters degree in social work, deals primarily with troubled families and many clients affected by HIV at the University of Maryland Law School in Baltimore, Maryland.

Once a childhood development specialist, Shanahan says she decided to pursue public interest law after becoming frustrated with problems in the classrooms.

Most of the children with problems in school were suffering from "system problems," she explains. "It wasn't something we could fix."

Now, after just one year in law school at the University of Maryland, Shanahan says she is excited at the prospect of working to help others with her legal knowledge. She encourages fellow students, whether already in law school or interested in attending, to perform public service.

"While it is important to be a good student if you want to go law school, you also need to do things that are productive and have so many different types of experiences," she points out.

"Get to know people in the legal community so they can see you care about your clients. Law schools are looking for caring people—they are impressed by students who have done lots of public service work."

Claudia Smith

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Claudia E. Smith is regional counsel with California Rural Legal Assistance, Oceanside Office.

Each year, pressed from their homes by poverty and a lack of work in Mexico and Central America, thousands of indigenous workers cross the U.S. border looking for jobs in the California fruit orchards.

Instead of opportunity, they find farmers trying to cheat them out of wages, cities passing ordinances against them, and smatterings of hate crimes that increase with the harvest season.

Many of the migrants from Central America are fleeing unrest at home. They speak pre-Columbian languages and are wary of outsiders. Recent Mexican migrants also are indigenous people. They face many cultural and linguistic barriers in this country.

"These people are marginalized and vulnerable," says Claudia Smith, a lawyer with California Rural Legal Assistance, which offers free legal representation to the migrant workers.

Smith was born in Guatemala and moved to the United States to attend George Washington University. Her legal studies at the University of San Diego, she says, were simply a means to an end.

"To me, the law is just a tool. I wanted to work with farm workers, and being a lawyer was an effective way to do it."

In the past, Smith and her colleagues have battled cities trying to ban sidewalk hiring of workers by employers who pay their workers less than the minimum wage. They pressure law-enforcement officers to aggressively investigate and prosecute hate crimes.

"We have dramas played out all day," Smith says. "Just to see the courage of my clients in the face of all odds, I'm in awe of their strength of character and their strength all around."

Barbara Baxter

Barbara Baxter is a staff attorney with West Virginia Legal Services Plan, Inc., in Wheeling and president of the West Virginia state bar.

When Barbara Baxter graduated from the West Virginia University College of Law in 1982, she wasn't planning a career of public service.

She joined a large law firm, where she was one of several lawyers appointed by the state supreme court to represent prisoners in a maximum security prison.

"The prison dated back to the Civil War and was horrifying," she says. "It wasn't safe for guards, and it wasn't safe for prisoners."

Baxter and her colleagues eventually convinced the West Virginia Supreme Court that such conditions were unconstitutional. The court ordered the prison closed, and a new 1,250-bed facility is now under construction.

While working on that case, Baxter realized she enjoyed public service. She left the law firm, set up her own practice, and five years ago joined West Virginia Legal Services Plan Inc.

Today she represents people living in five rural counties of Appalachia. "I think I am making a difference in what I do," she says. "Maybe not as big a difference as someone like Martin Luther King, but I am making justice work for people. That's a good feeling."

Many of Baxter's clients are women who have been abused. She helps them obtain domestic violence orders, which are protective orders in West Virginia, and represents them if they seek divorce.

She also represents people who have been refused Supplemental Security Income (SSI), a welfare program for poor people who are physically or mentally disabled. Baxter's clients, many of them veterans or homeless people, offer suffer psychiatric disabilities.

"This region has one of the lowest SSI approval rates in the country," she says. "Most people who apply get turned

down. One of my clients had been in a psychiatric institution for a year and still was turned down."

Almost every appeal Baxter has filed has ended in victory for her client.

West Virginia Legal Services Plan Inc. handles a wide variety of cases on such topics as welfare and housing. Recently, the agency filed a lawsuit demanding greater enforcement of child support orders.

"We have a lot of work," Baxter says. "In fact, we turn away two out of three people who are financially qualified to receive our services."

Having to turn away clients is one of the frustrations of the job for Baxter, along with the low pay.

Her greatest satisfaction comes from knowing she has helped her clients.

"I represented a homeless man who was sleeping under a bridge. I helped him get $446 a month in SSI, so now he can afford a place to live and food to eat. That makes me feel good."

James Bell

James Bell is a staff attorney at the Youth Law Center in San Francisco. He received the ABA Juvenile Justice Committee Award in 1994.

Justice, according to James Bell, requires "inhuman vigilance."

He should know. As a staff attorney at the Youth Law Center in San Francisco, Bell tracks public policies across the nation that affect people under 18.

"Right now caning is an issue," he says. "Several pieces of legislation being discussed in California would introduce caning in courtrooms. And if one legislature discusses caning, everyone wants to do it." Bell is dismissive of such measures, which he says make people feel better but do not address the root causes of crime.

"We say that this isn't right, and we talk about the implications of such policies," he explains. "We hope to get some

judgment into the picture, to slow people down and to open up dialogue."

Bell's clients are poor, under the age of 18, and living in government care or custody. He attributes hardening attitudes against young people, including young offenders, to a "low-level terror."

"Jobs pay $5 an hour, but it takes $10 to live," he says. "Government can't provide the things people need for a decent life, and no one knows what to do about that. That creates desperation and policies like 'three strikes you're out.'

"Our response to a social problem is not to deal with it, but to criminalize it. We have more people locked up in this country than any other country in the world, and nobody feels safer." Bell says a frustration of his job is that "you never win."

"You win something, and somebody goes and finds a loophole," he says. "You think you've solved something, and three years later you start from scratch. Even when you win, you don't win."

Bell is proud of his many legal challenges to the practice of holding children in adult jails, which he calls "abhorrent." Another source of pride was an invitation to South Africa, extended by the African National Congress, to advise the country on juvenile justice law. "That was the highlight of my professional career," says Bell, who will return to South Africa next year.

Monica Whitaker and Mary Feely are free-lance writers who wrote these short biographical sketches for Update on Law-Related Education, *published by the American Bar Association Special Committee on Youth Education for Citizenship.*

Thurgood Marshall and the Case Called *Brown*

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At one time "separate but equal" ruled many of the nation's school systems. This policy forced African-American students to attend schools separate from white children. Such segregation had been upheld by a Supreme Court decision in 1896 called Plessy v. Ferguson. *This is the story of how in 1954 the Supreme Court justices and African-American lawyers led by Thurgood Marshall, who would one day sit on the high court himself, overturned this unfair and hurtful practice.*

Thurgood Marshall was no stranger to the Supreme Court when he stood before the Justices in the autumn of 1952. Since the 1930s, Marshall and the legal staff of the National Association for the Advancement of Colored People (NAACP) had appeared before the Court in Washington, D.C., as well as countless southern courts, arguing case after case in their effort to chip away at segregation.

When Marshall had joined the NAACP as a young lawyer in 1936, the association was divided over how to legally attack the separate-but-equal doctrine. One strategy was to show that the separate facilities were not equal and thereby force states to spend more money on black schools and teachers. This legal campaign had produced a string of victories.

Yet Marshall and other NAACP lawyers saw this line of reasoning as merely laying the groundwork for a more direct attack on segregation—one that would demonstrate that separate schools could never be equal. And because separate schools were inherently unequal, they were unconstitutional.

During 1951, attorneys from the NAACP Legal Defense Fund represented African-American parents in Delaware, Virginia, South Carolina, Kansas, and the District of Columbia

who were seeking to have their children admitted to white schools. The attorneys were directly challenging the constitutionality of "separate but equal" by using the second, more direct argument—that segregated schools could not be equal. To support their argument, they pointed to social science research that showed segregation had a devastating effect on black children; it destroyed their self-esteem and desire to learn.

In 1952, the Supreme Court agreed to hear appeals in these cases. The four state cases were grouped under the title of the Kansas case, *Brown v. Board of Education of Topeka.* Brown was Oliver Brown, the father of a young schoolgirl named Linda who was forced to attend a distant all-black school, even though a white school was only four blocks from her home. By grouping all the state cases into one, the Justices provided the opportunity for the ultimate debate over segregated education. On one side of the debate were the states, arguing that segregation was indeed constitutional. On the other side were the African-American students and parents, whose main attorney, Thurgood Marshall, led the attack on its constitutionality.

This debate over segregation made some Supreme Court Justices extremely anxious. Even though all the Justices except Stanley Reed, from Kentucky, found segregation offensive, they hesitated to declare it unconstitutional. They feared that many white southerners would bitterly and even violently fight to keep their schools segregated. And if the Court's order to desegregate were not enforced by President Dwight Eisenhower and the Congress, the Court's standing in the eyes of the public would be severely damaged.

Even more important, several of the Justices worried that they would be exceeding the limits of judicial power if they reversed the earlier *Plessy* decision. This was especially true of Justices Felix Frankfurter and Robert Jackson. They believed that judges should overturn a law only when it clearly violated the Constitution. Frankfurter and Jackson worried that if they struck down segregation, they would be making their personal preference the law.

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The case dragged into 1953. During the spring of that year, members of the Court remained uncertain as they considered the arguments that had been presented by Marshall and his colleagues on one side and lawyers for the states on the other. Justice Reed supported segregation, Chief Justice Vinson leaned toward that opinion, and several other members of the Court were undecided.

Then in early September, Chief Justice Vinson died. President Dwight Eisenhower appointed a new Chief Justice, Earl Warren, the governor of California. While Vinson had leaned in the direction of segregation, Warren firmly opposed it. It would be Warren who would write the majority opinion explaining the Court's decision in *Brown*. That decision was announced on May 17, 1954.

That day began as many other days at the Supreme Court. But just before one o'clock, Chief Justice Warren picked up a paper and said, "I have for announcement the judgment and opinion of the Court in *Oliver Brown v. Board of Education of Topeka.*" The news reporters erupted into action. The Associated Press sent out a flash. Loudly and firmly, Warren read the decision of the Court: "In approaching this problem, we cannot turn the clock back to . . . 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. . . .

"Does segregation of children in public schools solely on the base of race . . . deprive the children of the minority group of equal educational opportunities? We believe that it does."

Chief Justice Warren then pointed to the social science research cited by Marshall and the NAACP lawyers to argue that segregation denied African-American children the full benefit of education: "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority . . . that may affect their hearts and minds in a way unlikely ever to be undone."

Therefore, the Chief Justice announced, "We conclude that in the field of public education the doctrine of 'separate

but equal' has no place. Separate educational facilities are inherently unequal."

The Supreme Court's decision was certainly not the end of segregation. Desegregating schools would take years. But *Brown* was a most significant step—for both the nation and for Thurgood Marshall. From this case, Marshall would go on to be appointed to the U.S. Court of Appeals in 1961 and then to the position of solicitor general of the United States in 1965. Two years later, President Lyndon Johnson would appoint him Associate Justice of the Supreme Court—the first African American to sit on the Court, the same Court he persuaded to outlaw segregated education.

"A Fine Mind"

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The story of Charlotte Ray, the first black woman attorney in the United States, is an inspiring story of achievement, but an unfortunate story of wasted talent as well. It is a story of failing, not of the individual, but of the narrow-minded society in which she lived. Yet it is also a story of promise and opportunity, for Ray began a path that later young black women could follow and even extend.

Howard University was founded in 1867 to educate newly freed slaves. Today it is the largest predominantly black university in the United States. Throughout the late 1800s, the school was one of the few institutions to offer professional education to victims of racial discrimination.

Yet directors of the school seemed initially to have had a little trouble offering that same education to victims of sexual discrimination. In 1890, Lelia J. Robinson, a Massachusetts lawyer, reported on the barriers that existed at Howard Law School. Robinson claimed that Howard's first woman law student gained admission to the school "by a clever ruse, her name being sent in with those of her classmates as C. E. Ray, and . . . she was thus admitted, although there was some commotion when it was discovered that one of the applicants was a woman."

Who was C. E. Ray, the woman who created this "commotion"? She was born Charlotte E. Ray on January 13, 1850, in New York City, to Charles Bennet Ray and Charlotte Augusta Burroughs Ray. Charlotte's father was a minister, an abolitionist, and a conductor on the Underground Railroad, that secret network of homes and farms that harbored runaway slaves on their way to Canada and freedom.

In the 1860s, Charlotte Ray was sent to Washington, D.C., to study at the Institution for the Education of Colored Youth. The school had been established by Myrtilla Miner, a white

woman who was devoted to teaching black children. Her school was constantly under attack, and one day it would be burned to the ground.

During Charlotte Ray's days at Miner's school, she excelled. After her graduation, she became a teacher herself in the Normal and Preparatory Department of Howard University. It was then, in 1869, that Ray registered for evening classes at the law school, applying by her first initials. Quietly yet determinedly, she proved wrong the school's doubts about a woman's ability to succeed at the study of law.

J. C. Napier, an 1869 classmate of Ray's, described her as "an apt scholar." Perhaps even more impressed was General O. O. Howard, founder and president of the university. In July 1870, Howard revealed in his third annual report that a trustee of the law school was surprised to find "there was a colored woman who read us a thesis on corporations, not copied from the books but from her brain, a clear incisive analysis of one of the most delicate legal questions." Ray later became a member of Phi Beta Kappa, a nationwide honor society that recognizes scholarship.

During her law studies, Ray began to specialize in commercial law. She presented a well-received paper and came to be regarded as an expert on corporate law.

After graduation from Howard Law School in February 1872, Charlotte Ray took and passed the District of Columbia bar examination. She was admitted to practice on April 23, 1872, becoming the first woman lawyer in the District of Columbia and the first black woman lawyer in the United States.

An article in a journal of the day noted that "in the city of Washington, where a few years ago colored women were bought and sold under sanction of law, a woman of African descent has been admitted to practice at the bar of the Supreme Court of the District of Columbia. Miss Charlotte E. Ray, who has the honor of being the first lady lawyer in Washington, is a graduate of the Law College of Howard University. . . . She doubtless has a fine mind and deserves success."

M. A. Majors, author of *Noted Negro Women,* an 1893 work on African-American women, said of Ray: "Her special endowments make her one of the best lawyers on corporations in this country; her eloquence is commendable for her sex in the court-room, and her advice is authoritative."

With such ability, Charlotte Ray had every right to expect a fine legal career. Even though most African Americans of the time were poor, a small middle class of professional blacks did exist. In fact, there were perhaps 25 black male lawyers in Washington, D.C., at the time.

Yet Charlotte Ray did not join this group. Although she tried to build her own law practice, clients did not come. Neither blacks nor whites seemingly needed to make use of her "fine mind" and expertise. Kate Kane Rossi, a white criminal lawyer and friend of Ray's, said in an interview in the *Chicago Legal News* that Charlotte, "although a lawyer of decided ability, on account of prejudice, was not able to obtain sufficient legal business and had to give up active practice."

Ray closed her law office in Washington and by 1879 had moved back to New York City. There she became a teacher in the Brooklyn public schools. She remained active in women's groups and later married. Ray died on January 4, 1911.

Opportunity and success were denied Ray during her lifetime. Yet she has not gone totally unrecognized. The Greater Washington Area Chapter of the Women Lawyers Division of the National Bar Association (GWAC), a group of African-American women lawyers, presents its Charlotte E. Ray Annual Award in honor of the first black woman lawyer in the United States.

Searching the Home of Dollree Mapp

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Sitting at home, enjoying one's privacy. Americans take that right for granted. Yet the founders of our country did not. They wrote that right into law as the Fourth Amendment. The amendment does not forbid the police to search a person's home for evidence of a crime, but as a general rule it does require that a search warrant must be legally obtained beforehand. Unfortunately, there are numerous cases on record in which the authorities have violated this constitutional guarantee. The case of Dollree Mapp was one such incident.

It was May 23, 1957. A woman named Dollree Mapp was alone in her home on the second floor of a two-family house in Cleveland, Ohio. The doorbell rang. What happened next would help establish a rule of law that would affect trials in state courts throughout the country. It would affect what evidence may be presented at a trial and what evidence must be thrown out.

When Dollree Mapp's doorbell rang that afternoon of May 23, she went downstairs and saw three policemen at her door. One of the policemen announced that they were looking for a man in order to question him about a recent bombing. They had reason to believe the man was in that house. The policemen also said they were looking for evidence of an illegal gambling operation. Mapp said she would have to talk to her lawyer before letting the police in. The officers waited outside while she phoned her attorney. He advised Mapp to ask if the police had a search warrant. A search warrant is a legal document that must describe the place to be searched. It must specify what the police are searching for, and it must be signed

by a judge. Mapp's attorney told her that if the police didn't show her a search warrant, she did not have to let them in.

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Mapp went back to the door and asked to see a search warrant. The policemen admitted that they did not have one. Mapp then locked the downstairs door on them. After one of the police radioed the station to explain what had happened, the three officers waited outside the front entrance of Mapp's house.

Needless to say, Dollree Mapp became more than a little nervous and upset as she watched the police from her upstairs window. A little while later, her phone rang. On the other end of the line was a police lieutenant who told Mapp to let the police search her house. Instead, Mapp called her lawyer again. He told her he would come over. Meanwhile, two more squad cars with four more police officers appeared outside Mapp's house.

When Mapp finally saw her lawyer's car pull up, she started down the stairs to let him in. By that time, however, several of the policemen had already broken into her hallway. Outside, the other officers were preventing Mapp's lawyer from entering the house.

Mapp demanded to see a search warrant. One of the officers held up a piece of paper, which Mapp grabbed and hid inside her clothing. A struggle followed. The police managed to wrest the paper away from Mapp, who was then handcuffed and led upstairs to her bedroom. Telling her to sit on the bed and not to bother anyone, the police began to search her home—her dresser and closet and suitcases, her living room and kitchen, even her daughter's bedroom. Outside Mapp's lawyer declared that what they were doing was against the law. The police ignored him.

When no evidence of any crime was found in Mapp's second-floor home, the policemen went down to the basement of the house to continue their search. There they noticed an old trunk, opened it, and found some books and pictures that they claimed were obscene. The police seized the material as evidence and arrested Mapp for possession of obscene materials, a violation of a state law in Ohio.

Mapp protested. She tried to convince the police that the materials were not hers but belonged to a former tenant. Nonetheless, she was arrested and brought to trial.

Mapp pleaded "not guilty" to the charge. During her trial, no search warrant was ever produced. The books and pictures, therefore, had been illegally seized. Yet despite this fact, the evidence was introduced at her trial. Since 1914, it had been the law that such illegally seized evidence could not be admitted in federal court. But Mapp was being tried in a state court. She was found guilty and sentenced to one to eight years in prison.

Mapp and her lawyer appealed her case to the Ohio Supreme Court. That court affirmed her conviction on technical grounds related to Ohio state law, not the Fourth Amendment.

Mapp then appealed to the U.S. Supreme Court to review her case. In 1961, four years after her conviction, the Court agreed to hear *Mapp v. Ohio*. The issues that the justices decided to consider were not whether the Ohio state law was unconstitutional but rather (1) whether the police had the right to enter Mapp's home without a search warrant and (2) whether the evidence taken could be admitted in a state court.

The Supreme Court ruled six to three in Dollree Mapp's favor. It ruled that the officers had not had the right to enter and search her home without a warrant, and it ruled that no evidence seized during such an illegal search could be used against her in a state court. Justice Thomas C. Clark wrote the majority opinion, citing the Fourth Amendment's ban on illegal searches and seizures—

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Justice Clark concluded: "We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by the same authority, inadmissible in a state court."

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With this ruling, the Court was extending the "exclusionary rule" that federal judges sometimes exercised—throwing out evidence that does not conform to exact constitutional standards. The Mapp decision applied the exclusionary rule to state as well as federal courts.

Dollree Mapp was therefore free. Her conviction was overturned. And the Supreme Court of the United States had safeguarded an important constitutional right.

Opening a Trade School's Doors

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by Margaret Bush Wilson

The following story reveals how effective lawyers can be without resorting to the courts. It shows not only the importance of obtaining accurate facts, but also the value of knowing what legal documents to research, such as wills, codicils, articles of incorporation, annual corporate registrations, and federal policies and regulations. In the end, this story is a case study in tactics, rapid response, and countermoves to challenge past policies and to open a school to all.

At the turn of the twentieth century, David Ranken, Jr., a wealthy Irish businessman who had made his fortune in St. Louis through his merchant uncle, had a dream. He wanted to establish a school primarily for training boys for the manual and mechanical trades or for general scientific and practical education.

In 1906, Ranken made his will, and after very modest gifts to charity and to the children of his two brothers—one in Derry, Ireland, and one in St. Louis—he left the bulk of his estate in trust to carry out his dream.

Later, in January of 1908, Ranken executed a codicil, a supplement to his will. In it he confirmed that he had indeed arranged for a corporation to be organized under the name of "The David Ranken, Jr., School of Mechanical Trades." In addition, he had transferred to this corporation a large amount of his property to operate this private school. By codicil he transferred the balance of his estate to the corporation and confirmed that this is what he wished.

Two years later, David Ranken, Jr., died. The persons named as trustees carried forward his dream.

A stately but somber structure was built for the David Ranken, Jr., School of Mechanical Trades, popularly known as

the David Ranken Trade School. It was a stone-faced three-story complex on the southwest block of Newstead Avenue, between Finney and Cook Avenues in midtown St. Louis. By the 1920s, this building complex was on the edge of a community of African Americans—some renters, some homeowners.

Youngsters in the neighborhood skipped past Ranken on their way to the nearby John Marshall grade school on Lucky Street and Newstead. Early in their lives, these youngsters began to hear from their elders about the limits at Ranken. "Only white men and boys" were admitted—it was written in David Ranken's will. That was the story. Everybody knew it, everybody believed it, and up until the 1960s, everybody accepted it.

Meanwhile, in the 1948 case *Shelley v. Kraemer,* the U.S. Supreme Court declared that racial restrictive covenants could not be enforced in the courts. Such covenants prohibited the sale of housing to people based on the color of their skin. Once this discriminatory practice was outlawed, the dwellings and businesses around the Ranken school became populated entirely by African Americans.

Nonetheless, this symbol of white educational opportunity sat with its doors closed to those in the community around it, and in its isolation it prevailed. It was rumored that the training received at Ranken was superior, that its graduates were eagerly sought after. All was rumor. Among those who lived around the school, none had ever set foot inside.

Then in the spring of 1962, a simple question from the lawyer/president of the St. Louis Branch of the National Association for the Advancement of Colored People (NAACP) to her law partner and husband ignited a spark. "Has anybody ever looked at David Ranken's will?" she wondered. As it turned out, nobody in the African-American community, up to that moment, had ever read the will.

So on a bright sunny afternoon in April of 1962, these two lawyers set out to find and read the will of David Ranken, Jr.

On the tenth floor of the Civil Courts Building in downtown St. Louis, the clerk on duty in the file room politely received their request to see the will of David Ranken, Jr. A few

moments were required to find the name in the card index and then the file number. A wait followed because a document dating back to 1906 was not in the current central files.

In due course, the file was located, and at a table conveniently set in the front area of the room for reviewing documents, both lawyers opened the file. There they found the will of David Ranken, Jr.

For the next hour, both lawyers read carefully, silently, and slowly, paragraph by paragraph, the last will and testament of David Ranken, Jr., dated July 16, 1906, and a codicil to that will dated January 15, 1908. At the end, they looked at each other quizzically, and one said to the other, "There's no reference to white men and boys in this document."

Then, to double-check, the lawyers agreed to divide the document in half, with each rereading a half. At the end, they reached the same conclusion—nothing about "white men and boys only" in either the original will or in the codicil to it.

Back to the file clerk with a further request—a certified copy, please, of the Ranken will and related documents. This was ordered, and in due course copies were forwarded to their law offices.

As the lawyers left the court building, the enormity of the hoax that had been contrived, nurtured, and perpetuated for over fifty years dawned. How incredibly amazing that no one before now had bothered to check the facts.

Almost immediately, the lawyer/president of the St. Louis Branch of the NAACP contacted the chairman of the Branch's Labor and Industry Committee, a local businessman. A copy of the Articles of Association of the David Ranken, Jr., Trade School was obtained from the Recorder of Deeds office. This document was handwritten in beautiful Spencerian script, which must have been the custom of the day. No racial restrictions were found in these articles or in later amendments to them.

It was then agreed that the two NAACP officers would seek to meet with the director of the David Ranken, Jr., Trade School. In due course, the two paid a visit to the school. They entered through the door on Cook Avenue and walked the length of a very long hall to the offices of the administrators,

where the office of the director was located. Everything was tightly closed. A knock on the door brought a timid secretary-type, who inquired what was wanted. The response was a meeting with the director. She left the officers standing in the hall and returned behind the closed door. After a measured wait, she reappeared and advised the two that the director was not willing to see them. They acknowledged her response and departed.

Back at the NAACP offices, it was decided that a list of the board of trustees of the David Ranken Trade School with addresses would be obtained, and each would be written and mailed a certified letter from the St. Louis NAACP. This list revealed the names of many prominent business leaders in the St. Louis metropolitan area.

The letters were prepared, pointing out that the founder had placed no restrictions on those who could be admitted to Ranken and urging the board to open the school to all. These letters were never answered or even acknowledged.

At this very same time, the St. Louis NAACP Labor and Industry Committee was also pressing for more openness in the apprenticeship program at O'Fallon Technical High School, the public technical high school. As this pressure mounted, it was learned that the union sponsors of the apprenticeship program were negotiating to move the program to the David Ranken Trade School.

Since the apprenticeship program was funded in part by federal funds, the St. Louis NAACP wired a protest immediately to the U.S. Department of Labor. It objected to any proposed move of the apprenticeship program to Ranken because the school was following a policy of excluding applicants based on race.

The response of the federal government was firm and forthright: it would not fund a program at a site where racial discrimination was practiced.

Along with a steady push on Ranken by the local NAACP, and the blocking of the proposed transfer to Ranken of the apprenticeship program, a third thrust involved young applicants. Beginning in April of 1962, young African-American

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males began to apply for admission to Ranken. Among these were Russell Partee, Arthur J. Kennedy, Jr., Joseph Washington, Henry Taliaferro, Wallace Riddle, and Michael Washington.

In addition, the city lawmakers—the St. Louis Board of Aldermen—enacted an ordinance that was signed by the mayor on November 29, 1962, requiring no discrimination based on race in the admission of students to vocational schools in the city of St. Louis. This ordinance was not to become effective until January 1, 1963. But in a letter from the St. Louis NAACP dated December 4, 1962, the Board of Trustees of Ranken was urged to comply promptly with the spirit as well as the letter of this law.

Finally, in March of 1963, without any public announcement or notice to the St. Louis NAACP, the David Ranken Trade School quietly opened its doors to its first African-American students.

Today, over thirty years later, some eighty students of African descent are enrolled at the institution, which is now known as Ranken Technical College.

The two lawyers involved in this story, Margaret Bush Wilson and the late Robert E. Wilson, Jr., were practicing attorneys in St. Louis, Missouri. Twelve years after the time of these events, Mrs. Wilson was elected chair of the National Board of Directors of the NAACP and served nine terms (1975-1984) in that office. She recently completed a three-year term (1991-1994) as Chair of the American Bar Association Special Committee on Youth Education for Citizenship.

Scholar, Advocate, Justice

by Jonathan Entin

The second woman to be appointed to the highest court in the land has had a long and successful professional history working in the law: first as researcher and professor, then as practicing attorney, and finally as judge. Yet Ruth Bader Ginsburg has had to struggle against sex discrimination throughout her career. Perhaps it is no surprise, then, that much of her work has been devoted to aiding both men and women in the fight against sex discrimination.

In 1873, the Supreme Court ruled that states could refuse to allow women to become lawyers. Justice Joseph Bradley, writing for himself and two colleagues, explained why: "The natural and proper timidity and delicacy which belongs to the female sex" made women unsuited to the rough and tumble of the law. "The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother," he went on. "This is the law of the Creator. And the rules of civil society" must follow this "divine ordinance."

For nearly a century after Myra Bradwell lost this case in her attempt to become the first female lawyer, U.S. law treated women as second-class citizens. To be sure, the Nineteenth Amendment guaranteed women the right to vote. But women were excluded from many schools and certain kinds of jobs; they were not even allowed to make contracts or own property. And in many areas, women were excluded from juries and other civic activities.

It is hard to believe that many of these legal restrictions were quite common as recently as twenty-five years ago. There are many reasons that they are rare today. One is the work of

Ruth Bader Ginsburg, who now sits on the same Supreme Court that turned a blind eye to Myra Bradwell.

Justice Ginsburg was born Joan Ruth Bader in Brooklyn, New York, in 1933. She knew tragedy at an early age: her sister died in childhood, and her mother died during her senior year of high school. But Ruth's mother had already instilled in her daughter the desire to excel in school and go on to college.

Ruth Bader fulfilled her mother's dream by winning a scholarship and attending Cornell University, where she graduated first among the women in her class. While at Cornell, she met her husband, Martin Ginsburg. The two were married after Ruth's graduation.

Ruth Bader Ginsburg then enrolled at Harvard Law School, one year behind her husband, in one of the first classes that admitted women. Apparently, the introduction of women did not go entirely smoothly, however. One dean of the school, for example, asked each first-year woman why she was occupying a place that otherwise would have gone to a man.

Despite this attitude, Ginsburg went on to compile an outstanding academic record during her first two years at Harvard. And this she accomplished while caring for her young daughter and attending many of her husband's classes for him as he recovered from cancer. With Ruth's help, Martin was able to complete his course work and graduate. Ruth transferred to Columbia Law School when Martin, now a prominent lawyer in his own right, got an excellent job in New York City.

After her own graduation, and despite her extraordinary record, Ginsburg received no job offers from law firms in New York. In fact, she couldn't even get an interview for a clerkship with a Supreme Court Justice. But she did land a clerkship with a U.S. district judge, Judge Edmund L. Palmieri. Twenty years later, Judge Palmieri called Ginsburg one of the best clerks he had ever employed.

After completing her clerkship, Ginsburg was invited to return to Columbia Law School as a researcher. Her project compared U.S. and Swedish law. Ginsburg did not speak or read Swedish, but she learned the language well enough to write three books and several articles on the Swedish legal sys-

tem. For this unique and important work, she was honored by the King of Sweden.

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In 1963, Ginsburg joined the faculty of Rutgers Law School. While at Rutgers, she became pregnant with her second child. Worried that her pregnancy might cost her her job, she hid it by wearing loose-fitting clothes. From this personal experience and others, Ginsburg began to focus on laws and practices that restricted women's opportunities. She taught a course on sex discrimination to her Rutgers students and would eventually publish the first legal textbook on the subject.

In addition to teaching and writing academic works in this field, Ginsburg also tried to reform the law itself. She joined the American Civil Liberties Union (ACLU) and began handling cases with a personal meaning for her—civil suits on behalf of teachers who lost their jobs because they became pregnant.

Victory in such sex-discrimination cases would require persuading a majority of the Supreme Court that classifying people on the basis of their sex should be looked on with suspicion, just as classifying them by race was. This demanded a great change because for years the Court had upheld laws that treated women differently from men, as Myra Bradwell's case showed. Ginsburg wanted to convince the Justices that the equal protection clause of the Fourteenth Amendment, which prohibits race discrimination, should bar sex discrimination as well.

After years in the somewhat sheltered world of teaching and research, Ginsburg turned out to be a superb lawyer. In some ways, this shy, bookish professor was an unlikely activist. Many years later she admitted that she was too nervous to eat before arguing in the Supreme Court. But she made the transition very effectively, and her efforts slowly began to have an enormous impact. Many other lawyers who were handling sex discrimination cases regularly sought her advice. As a result, she was directly or indirectly involved in almost every important case in this field throughout the 1970s. A few examples illustrate the impact of her work as a lawyer.

Her first case to reach the Supreme Court came from Idaho. There state law required that the local courts choose

males over equally qualified females when selecting someone to handle the affairs of people who had recently died. In *Reed v. Reed,* the Court unanimously found that this preference unfairly discriminated against women.

In 1972, Ginsburg became director of the ACLU's newly founded Women's Rights Project. The project's name was somewhat misleading because its goal was to challenge all laws and practices that discriminated on the basis of sex. In fact, Ginsburg enjoyed working on cases that would gradually erode traditional notions of sex roles, and some of her favorite cases involved claims brought on behalf of men who took a more active part in child care and domestic work than is common even today.

For example, the next year Professor Ginsburg was back at the Supreme Court. This time she was working on behalf of a female Air Force officer, Sharon Frontiero. Frontiero was challenging a military regulation that made it much more difficult for husbands of female soldiers to receive special housing and medical benefits than for wives of male soldiers to obtain the same benefits. The regulation assumed that wives depended on their husbands for support, but it required husbands to prove that they depended on their wives. In *Frontiero v. Richardson,* the Court concluded that the regulation rested on outdated stereotypes about both men's and women's roles. Although the Justices differed over certain details, they invalidated the regulation. Accordingly, Captain Frontiero and all other married Air Force women and their spouses would be allowed the same benefits that married Air Force men and their spouses got.

Two years later, Professor Ginsburg returned to the Supreme Court on behalf of Stephen Charles Wiesenfeld. (Ginsburg later described Wiesenfeld as her favorite client, and he testified at her confirmation hearing when she was nominated to serve on the Court.) Mr. Wiesenfeld's wife had died in childbirth, leaving him to raise their newborn son. He applied for Social Security survivors' benefits, which were automatically available to women in situations like his. However, they were not available to men. In *Wienberger v. Wiesenfeld,* Ginsburg once more persuaded the Court to strike down a sex-based

rule. The Court condemned the policy as reflecting "archaic and overbroad generalizations" about sex roles.

Ginsburg also played an important part in a series of cases that struck down state laws limiting a woman's right to serve on juries. As recently as the 1960s, the Supreme Court had upheld such laws. But soon afterward, based in significant measure on the reasoning of several of Ginsburg's cases, the Court made clear that the rules about jury service must be the same for men and women.

During the mid-1970s, Ginsburg personally argued half a dozen cases before the Supreme Court and directly assisted in at least fifteen more. Those cases fundamentally changed U.S. law regarding sex discrimination. Meanwhile, in 1972, she had returned to Columbia as the law school's first female full professor. Her extraordinary performance as an advocate, legal scholar, and law teacher prompted President Carter to appoint her to the U.S. Court of Appeals in Washington in 1980. Martin Ginsburg left his New York practice and position at Columbia Law School to move with his wife to the capital, where he became a professor at Georgetown University Law Center.

Judge Ginsburg served thirteen years on the Court of Appeals. She won a reputation as a fair and clear-thinking jurist who paid close attention to the details of each case.

Then in 1993, Justice Byron R. White retired from the Supreme Court after more than thirty years' service. President Clinton chose Judge Ginsburg as White's successor. Although the most recent Court nominees had provoked bitter debate in Congress, her selection met with general acclaim. Some feminists did question her support of a woman's right to choose an abortion because Ginsburg had expressed doubts over some details of the Supreme Court's ruling in *Roe v. Wade*. But at her confirmation hearings, she announced outright that she believed a woman's right to choose was something "central to a woman's life, to her dignity." The Senate easily confirmed her appointment 97-3, and she took the oath of office August 10, 1993.

The newly seated Justice Ginsburg quickly attracted attention for her active participation in oral arguments and her knack for getting to the essence of complicated legal issues.

Justice Ginsburg, a pioneer advocate of women's rights and the second woman to sit on the Supreme Court, came to her position with special qualifications: she was a distinguished legal scholar who had also been one of the best lawyers ever to argue before the nation's highest court.

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A. Lincoln: Lawyer

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by Janet Key

Everyone knows that Abraham Lincoln was the sixteenth president of the United States, and that he led the country through its darkest hour—the Civil War. But how many of us know anything about his life before the White House? Far from being a folksy, down-home country lawyer, Lincoln was a shrewd, sophisticated, tough, and aggressive litigator with a staggering caseload.

On the night of May 6, 1856, the steamboat *Effie Afton*—the fastest side-wheeler of her draft on the Mississippi—crashed into the first bridge ever built across the river.

The collision turned over a stove on the boat, which was destroyed by flames in less than five minutes; the railroad bridge also caught fire and collapsed into the river.

The bridge between Rock Island, Ill., and Davenport, Iowa, had been built less than a year before by the Chicago, Rock Island & Pacific Railroad. The stakes in the lawsuit over the accident, which the *Effie Afton*'s owners blamed on the bridge, were huge—literally, would it be trains or boats that would carry the nation's rapid westward expansion?

No one understood those stakes better than Abraham Lincoln, whom the bridge company hired to defend it in federal court in Chicago.

Far from being the folksy, small-time lawyer portrayed by Carl Sandburg and others, Lincoln was one of the leading railroad lawyers of his time, a pioneer in bringing corporate law to the West. As a former surveyor, riverboat hand, and inventor, Lincoln was a master of complex technical questions as well as legal technicalities.

The 44-year-old lawyer from Springfield, Ill., based his defense on the *Effie Afton*'s negligence in navigating the tricky river. Lincoln spent months studying the rebuilt bridge, the river currents and their effect on navigation—even hiring steamboats to go under the bridge from both directions "until he knew the bridge better than the man who made it," according to one account.

His arguments to the jury were so convincing that it deadlocked and the case was dismissed—a critical victory for the railroad industry and one that solidified Lincoln's reputation as a top corporate attorney. It also should have been enough to torpedo Lincoln's image as an inconsequential lawyer whose real interest was politics.

Vast quantities of new information have been brought to light about Lincoln the lawyer and have begun to dim the time-worn myth of "Honest Abe," the down-home politician who practiced a little politically correct law on the side.

What is emerging instead is a portrait of a shrewd and sophisticated legal combatant: an aggressive litigator adept at examining witnesses and addressing juries, and an adroit legal chess player in both civil and criminal cases. The records show that Lincoln was also exceptionally skilled at preparing cases on the run, particularly while riding the judicial circuit of the time.

Lincoln handled an estimated 5,000 cases, averaging 200 cases a year, most of them in circuit court practice. In Sangamon County, where Springfield is located, Lincoln and his partner William Herndon so dominated casework that in the fall term of 1843, the two saw action on 50 separate cases in one week. In 1853, they captured one-third of all the cases that appeared on the local docket.

Even on the much larger Eighth Judicial Circuit, which stretched for several hundred miles through 14 counties of eastern and central Illinois, Lincoln had the largest single caseload. He rode the entire circuit for two to three months every spring and fall, often picking up clients on the courthouse steps or coming in to assist local attorneys.

But the numbers don't tell the entire story. More than two-thirds of Lincoln's circuit court caseload concerned com-

mon questions of debt, ejectment [repossession of real estate], slander, assumpsit [breach of contract] and trespass, while one-fourth of it involved chancery or equity actions—at the time, a separate court—for foreclosure, divorce, injunction and land division. Only 8 percent of Lincoln's cases were criminal, although they received the most publicity.

Far more common were cases like the one in which Lincoln defended the administrator of an estate for not securing a widow's dower rights—in effect, depriving her of one-third of her deceased husband's property to which she was legally entitled. Lincoln lost the case.

Slander suits, usually the result of name-calling family feuds, were common in Illinois' circuit courts prior to the Civil War, and Lincoln took his share of them. A case that Lincoln took in DeWitt County in 1855, however, involved much more than slander.

As the result of a family dispute over William Dungey's marriage to Joseph Spencer's sister, Spencer claimed that his brother-in-law, "Black Bill"—actually a dark-skinned man of Portuguese descent—was a Negro. Because Illinois had passed so-called "Black Laws" in 1853 that denied free blacks the right to settle in the state, Dungey faced losing his marriage, property and right to stay in Illinois if Spencer's claims stuck.

Lincoln filed suit against Spencer for slander and during the trial managed to not only demolish his opponent's reputation and the credibility of his witnesses, but to win the case for his client. For teaching Spencer an expensive lesson on domestic relations and saving Dungey's entire livelihood, Lincoln collected a $25 fee.

Lincoln was so widely respected for his legal knowledge that he frequently sat in for his friend and later campaign manager, Eighth Circuit Court Judge David Davis—a situation that all the lawyers had to approve. In Sangamon County alone, "Judge" Lincoln presided over 300 cases between 1854 and 1859. As a judge, he carried a full and varied caseload himself, and none of his cases was ever appealed to the Illinois Supreme Court, the measure that judges used then to determine how well they had done.

In addition, only 10 percent of his own circuit court cases were ever appealed, and in cases where he represented the appellant, he was successful in three of every four.

Isaac Arnold, a legal and political colleague of Lincoln's, summed up the future president's abilities as a lawyer: "Lincoln was . . . the strongest jury lawyer in the state. He had the ability to perceive with almost intuitive quickness the decisive point in the case. In the examination and cross-examination of a witness he had no equal. . . . His legal arguments were always clear, vigorous and logical, seeking to convince rather by the application of principle than by the citation of cases. . . . He seemed to magnetize everyone."

Janet Key is a free-lance writer in Chicago. This story is abridged and adapted from an article she wrote for the February 1994 issue of the ABA Journal.

The Judge Who Shaped Civil Rights

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by Jack Bass

Frank M. Johnson's landmark decisions made him one of the most hated men in the South 30 years ago. Now he is one of the most revered.

The images still flicker in grainy shades of b. ck and white. Hooded Ku Klux Klansmen standing defiantly in front of burning crosses. Civil rights marchers fleeing the blows of police batons. Church buildings smoldering after a midnight firebombing.

No matter what the U.S. Supreme Court had said, desegregation in the South was not going to proceed with all deliberate speed. If legal manipulation could not stop it, intimidation would.

If a state governor had to stand in a schoolhouse door to turn away black children, then that is what he would do.

And if U.S. District Court Judge Frank M. Johnson, Jr., had to rewrite state laws to allow black citizens to vote, fashion new relief to let black children go to white schools, and require assurances from the president of the United States that court orders would be enforced, then that is what he would do.

Johnson is now a senior judge of the 11th U.S. Circuit Court of Appeals. The violence that tried to deny what Civil War-era constitutional amendments had promised is history. The hopes of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 are now 30-year legacies.

But when President Dwight Eisenhower appointed Johnson in 1955 to the district court bench in Montgomery, Ala., the struggle had only begun.

A cross would be burned in his yard. His mother's house would be bombed in the mistaken belief it was his. He would receive death threats and require constant protection from federal marshals.

He would become the legal conscience of Old Dixie.

In 1961 Johnson enjoined the Ku Klux Klan from further violence after a planned assault at the Greyhound bus station in Montgomery bloodied "freedom riders" who had arrived from Northern states to bolster local civil rights demonstrations. Johnson entered the courtroom at 9 A.M. on the dot. His control was legendary—he never used a gavel.

"Any motions?" he asked.

"The atmosphere is charged here," the first lawyer began, "and I move for a change of venue to New Orleans."

"Motion denied."

"If your honor please, I move to sever my defendant. My defendant happens to be the chief of the Ku Klux Klan, and it's unfair to him to have him tried with these other people."

"Motion denied."

"Your honor, I move to quash the subpoena served on my client, and I would like to be heard on this one."

"I have just heard it. Motion denied."

The hearings exposed Klan secrets, and evidence revealed a conspiracy in attacks on freedom riders in Montgomery, Ala.

When a voting rights march in 1965 from Selma to Montgomery ended in nationally televised assaults by state police, Johnson issued an injunction to halt a second march until he could hold hearings. He privately warned lawyers for Martin Luther King, Jr., that he would jail the civil rights leader if he violated the order and marched anyway.

After four days of hearings recording widespread abuse and officially sanctioned violence against blacks attempting to register to vote, Johnson issued an order that he said reached the "outer limits of what is constitutionally allowed." The march could go on and block portions of a major highway.

Before issuing the order, he insisted on assurances from President Lyndon Johnson himself that the federal government would enforce it. The president knew the stakes and agreed.

The president was worried about potential violence, remembered Bill Moyers, then a White House aide. "Lyndon Johnson knew it was a breakthrough point either way. . . . We knew it could make or break the Voting Rights Act."

Judge Johnson's approach applied to constitutional wrongs the same measure of proportionality used in civil and criminal law—the greater the wrong, the greater the penalty. Or, in this case, remedy.

In an early voting rights case, Johnson noted that Alabama officials had routinely ignored state literacy requirements to register whites to vote, but enforced them zealously against blacks. His remedy: The least restrictive qualifications for whites would be the standard for blacks, as well.

The consequence of Johnson's decision swept beyond his Alabama jurisdiction and into the new Voting Rights Act. Congress incorporated his so-called "freezing doctrine" into the law by suspending literacy requirements and requiring the U.S. Department of Justice to approve any changes in voting laws in jurisdictions covered by the act.

Lyndon Johnson once said that he would not have to be president if his name were Frank Johnson.

"What he was saying," Moyers explained, "was that Judge Frank Johnson had been able, by a series of decisions, to bring the moral force and the legal force of the U.S. government behind the kind of changes that we were trying to bring about in Washington. It was a recognition of Johnson's ability to accomplish justice through the courts in a less tortuous path than through Congress."

During 24 years as a trial judge, Johnson fashioned relief that transformed the law in school desegregation, voting rights, jury selection, First Amendment issues, gender discrimination, and treatment of mental patients and prison inmates.

He never viewed matters as societal issues, however. To him they were always legal issues.

Johnson has taken on critics who charge that judicial activism is at odds with neutral principles of law.

"In my view, the doctrine of neutral principles robs the Constitution of its vitality. It freezes constitutional thinking. The

framers were pragmatic [practical] men, and the Constitution is a practical blueprint. Its genius lies in its generality."

When Johnson received the ABA's Thurgood Marshall award, he told his audience that one principle guided him as a federal judge—the supremacy of law.

"It is the obligation of every judge to see that justice is done within the framework of the law. I have attempted to fulfill that obligation by applying the rule of law to the facts before me."

In the end, the Alabama House of Representatives, which 25 years earlier had voted to ask the U.S. Congress to impeach Johnson, voted unanimously in 1992 to praise the decision to name the Montgomery federal courthouse for him. What they said about Johnson was that he had shaped the law that changed the nation.

Jack Bass is the author of Taming the Storm: The Life and Times of Judge Frank M. Johnson Jr. and the South's Fight Over Civil Rights. *This story is abridged and slightly adapted from an article he wrote for the December 1994 issue of the* ABA Journal.

1 "A Commitment to Justice"

District of Columbia v. John R. Thompson Company, 346 U.S. 100 (1953)

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)

2 The Right to Counsel

Gideon v. Wainwright, 372 U.S. 335 (1963)

Betts v. Brady, 316 U.S. 455 (1942)

3 War, Race, and the Constitution

Korematsu v. U.S., 323 U.S. 214 (1944)

4 Freedom of Religion on Chimney Rock

Lyng v. Northwest Indian Cemetery Protective Association, 106 S. Ct. 1319 (1988)

Northwest Indian Cemetery Protective Association v. Peterson, 565 F. Supp. 586 (1983) (N.D. California)

Wisconsin v. Yoder, 406 U.S. 205 (1972)

5 A Texas Woman Who Fought for Women

Roe v. Wade, 410 U.S. 113 (1973)

6 Thurgood Marshall and the Case Called Brown

Plessy v. Ferguson, 163 U.S. 537 (1896)

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)

7 Searching the Home of Dollree Mapp

Mapp v. Ohio, 367 U.S. 643 (1961)

8 Opening a Trade School's Doors

Shelley v. Kraemer, 334 U.S. 1 (1948)

9 Scholar, Advocate, Justice

Reed v. Reed, 404 U.S. 71 (1971)

Frontiero v. Richardson, 411 U.S. 677 (1973)

Wienberger v. Wiesenfeld, 420 U.S. 636 (1975)

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